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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1931

No. 40

STATE TAX COMMISSION OF MISSISSIPPI ET AL., ETC., APPELLANTS,

vs.

INTERSTATE NATURAL GAS COMPANY, INCORPORATED

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

FILED MARCH 30, 1931

(35,755)

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[fol. a] [Caption omitted]

[fol. 1]

IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF MISSISSIPPI, JACKSON DIVISION, TO NOVEMBER TERM, A. D. 1930

In Equity. No. 326

INTERSTATE NATURAL GAS COMPANY, INC., Complainant,

vs.

STATE TAX COMMISSION OF THE STATE OF MISSISSIPPI, Composed of Lester C. Franklin, Chairman; Homer H. Casteel and Webb Walley, and George T. Mitchell, Attorney-General of the State of Mississippi, Defendants

BILL OF COMPLAINT—Filed June 30, 1930

To the Honorable Judges of the United States District Court:

I

Complainant, Interstate Natural Gas Company, Inc., would with respect show unto the Court that, Complainant is a corporation organized and existing under and by virtue of the laws of the State of Delaware, domiciled at Wilmington, in said state; that at the time of the filing of this bill [fol. 2] of complaint in the above styled cause, prior thereto, since said date and now, Complainant has been and is an actual resident and citizen of the State of Delaware and of the United States.

II

Defendant, the State Tax Commission of Mississippi, is composed of Lester C. Franklin, Chairman, Homer H. Casteel, and Webb Walley, who are duly and legally elected, qualified and acting members thereof and are actual residents and citizens of the State of Mississippi and of the United States; the official and legally designated location of the office of the said State Tax Commission of Mississippi is in the State Capital, the City of Jackson, in Hinds County,

State of Mississippi; Defendant, George T. Mitchell, is the duly and legally elected, qualified and acting Attorney-General of the State of Mississippi, and the official and legally designated location of his office is in the State Capital, the City of Jackson, in Hinds County, State of Mississippi; all of said Defendants hold their respective offices and official positions under and by virtue of the laws of the State of Mississippi.

III

Complainant, Interstate Natural Gas Company, Inc., is the owner of a large acreage of proven mineral lands in the [fol. 3] State of Louisiana and from these and other lands in the State of Louisiana, Complainant owns and is constantly acquiring natural gas which is a lawful article of commerce; for finding a market for said natural gas Complainant has constructed, owns and operates for the transportation or transmission of Complainant's said natural gas to a market or markets, a pipe line and lines, extending from the Northern part of the State of Louisiana, in a Southeasterly direction, through the State of Mississippi, and again into the State of Louisiana, the Southern part thereof; in the State of Mississippi, Complainant through said pipe line or lines transports Complainant's natural gas from the State of Louisiana, through the State of Mississippi, as aforesaid, and an extremely small quantity in to the State of Mississippi that is sold, flowing from said pipe line or lines without being stored for any time or in any quantity and by order before leaving the State of Louisiana, to distributors at two points therein, all of said transportation or transmission of natural gas through and into the State of Mississippi, being in continuous transit without interruption and wholly and exclusively in interstate commerce.

IV

This case is a suit of a civil nature in equity, whereof the District Court of the United States, Southern District of Mississippi, Jackson Division, has original jurisdiction and the amount involved in this suit, exclusive of interest [fol. 4] and costs, exceeds the sum of Three Thousand Dollars ($3,000.00), as will be herein shown; this suit arises the Constitution of the United States and is further-

more a controversy wholly between citizens of different states and may be finally adjudicated as between them.

V

Defendant, State Tax Commission of Mississippi, is charged and vested with the exclusive legal responsibility and official duty to enforce the provisions, affecting Complainant, of Chapter 88 of the Laws of 1930 of Mississippi, and further designated as House Bill number 517, enacted into alleged law or statute by the Legislature of Mississippi at the regular session thereof in and for the year, 1930; the said House Bill number 517, was permitted to become an alleged law, without the signature of the Governor of the State of Mississippi, on May 10, A. D. 1930, to take effect June 1, A. D. 1930; the said statute in contravention of the Constitution of the United States, attempts to inflict a privilege tax upon Complainant as a person transporting through and into the State of Mississippi, in interstate commerce, natural gas through pipes; the said statute is further designated and provides may be cited as the "Privilege Tax Law of 1930", which in its entirety is filed herewith and attached hereto as exhibit A to this bill of com-[fol. 5] plaint and prayed to be taken as a part hereof as if fully incorporated and set out herein; Defendant, George T. Mitchell, Attorney-General of the State of Mississippi, is the Attorney for, and the legal adviser of said State Tax Commission, and is the chief legal officer and legal representative of the State of Mississippi and the said State Tax Commission, in the enforcement of the civil and criminal laws for and on behalf of said State Tax Commission and for and on behalf of the State of Mississippi.

VI

The said so-called "Privilege Tax Law of 1930", or act, attempts to impose and levy and to provide for the collection of annual privilege taxes, in addition to any and all other taxes imposed by law upon the persons, firms, copartnerships, associations, or corporations, for the privilege of carrying on and continuing the businesses, activities and or exercising powers and rights designated therein.

Section 163 of said law provides:

"Sec. 163. Pipe Line Company.—Upon each person engaging and or continuing in this state in the business of operating a pipe line or transporting in or through this state oil, or natural, or artificial gas, through pipes; and or conduits, a tax, as follows:

On each mile of pipe having a diameter of 20 inches [fol. 6] or more	$50 00
On each mile of pipe having a diameter of 15 inches and less than 20 inches	35 00
On each mile of pipe having a diameter of 12 inches and less than 15 inches	25 00
On each mile of pipe having a diameter of less than 12 inches	10 00

The term 'pipe line' as used in this section shall include only trunk lines and shall not apply to those pipe lines used solely for distributing gas or oil in or near cities, towns and villages (known as service lines), to the ultimate consumer. And this section shall not apply to those persons, firms, or corporations mining and or producing gas or oil on which a privilege tax measured by gross production is imposed and paid in his state."

Complainant and Complainant's pipe line or lines are not within exception or exceptions set out in said Section 163, since the pipe lines of Complainant referred to are trunk pipe lines and Complainant pays no privilege tax measured by gross production or otherwise, in the state of Mississippi.

Section 164 of said act requires that each person required to pay a privilege tax by the preceding seven sections, in- [fol. 7] cluding Section 163, aforesaid, to render annually under oath and file with the State Tax Commission an application upon blanks prescribed and furnished by said State Tax Commission, Defendant herein, full and complete information in regard to the business of such person, including the name of the company, the nature of the company, whether a person or persons, or association or corporation, and under the laws of what state or county organized, the location of the principal office, the name and post office address of a principal officer therein designated and of such in Mississippi, also full information in regard to the earnings, further, information, in regard to different indus-

tries including the total number of miles of gas mains or pipe lines, and the diameter of same, specifying the number of miles of each diameter of pipe; and it is provided that each person shall be required to furnish in his application only the information pertaining to his operations and such other and further information as Defendant, the State Tax Commission, may require, all to be furnished on or before June 1, of each year, which for the year, 1930, is on or before the day on which said act purports to take effect.

Section 165 of said act provides that Defendant, the State Tax Commission, shall annually, on the first Monday in July, or as soon thereafter as in practicable, but not later that the first Monday in August of each year, classify in- [fol. 8] dustries designated therein and at the same time ascertain and set forth the units to be used in determining the tax due to be paid by public utilities and or persons thereinbefore mentioned and to make such classifications of the same as will clearly show the amount of tax to be paid by each of such public utilities or persons, and provides for objections and hearings and the method for making final the findings, determination and classifications as made by said Defendant, the State Tax Commission.

Section 166 of said act provides that it shall be the duty of Defendant, the State Tax Commission, to send a notice to each such taxpayer of the amount of privilege taxes due by him, and the said tax shall be paid on or before the first day of December in each year, but failure to receive said notice shall not exempt any taxpayer from the payment of damages as imposed by said statute; further, upon the payment of the said tax, Defendant, the State Tax Commission, shall issue a state wide license and that the privilege tax imposed by sections designated including Section 163 on pipe line companies shall be for state wide purposes.

Section 219 of said act provides that such state wide license shall be obtained from Defendant, the State Tax Commission.

Section 225 of said act provides that all persons liable for privilege taxes who shall fail to procure the license therefor before beginning the business for which a privilege [fol. 9] tax is required by said act, or who shall fail to renew, during the month in which it is due, the license on a business for which he has theretofore procured a privilege license, shall in each or either such instance be liable for

double the amount of the tax required and it is made the duty of the collector whose duty it is to collect the tax on such business to collect the said tax penalty, issue a separate license for the tax, and for the penalty, and to endorse across the face of the license issued as a penalty the words: "Collected as Damages;" and such collecting officer shall account for all such penalties, less commissions as he is required to account for other privilege taxes; said section further provides that in addition to the penalties described the delinquent taxpayer shall be guilty of a misdemeanor and subject to the penalties therefor.

Section 240 of said act provides that the tax officer required to collect privilege taxes shall require all persons liable to pay a privilege tax to pay the same and he shall cause all persons doing business without a privilege license to be prosecuted; and the tax officer required to collect privilege taxes shall be liable for wilful failure to collect the same in the same manner as for failure to collect advalorem taxes, and the liability of such officer shall extend to all cases where he might collect such taxes but negligently fails to do so, and the demand required by this section, it is provided, [fol. 10] shall not be necessary to render liable the taxpayer to the penalty of doing business without first paying the tax.

Section 242 of said act provides that any person violating any of the provisions thereof shall be guilty of a misdemeanor and on conviction thereof shall be fined not more that $500.00 or imprisoned in the county jail not exceeding six months, or by both such fine and imprisonment in the discretion of the court within the limitations aforesaid, and such fine and imprisonment shall be in addition to any other penalty imposed by any particular section of said act.

VII

Complainant with respect, would further show that, under the terms of said act it is the exclusive duty of Defendant, the State Tax Commission, to exact the collection of said Privilege tax from Complainant and it is the mandatory duty of said Defendant, the State Tax Commission, to collect penalties thereon and to cause Complainant to be prosecuted should Complainant not have such privilege license as provided for by said Section 240 of said statute; as hereinbefore shown Section 225 of said statute provides

for drastic penalties in double amount of the privilege tax exacted and in addition makes the delinquent taxpayer guilty of a misdemeanor and subject to the penalties therefor, as is also provided by Section 242, aforesaid, inflicting [fol. 11] a maximum fine of $500.00 and imprisonment in the county jail for six months; Complainant would with respect further show that, there are many sections of said privilege tax statute, each section averaging numerous provisions and the said maximum fine of $500.00 and six months in jail is provided for the violation of any one of said provisions, all of which reveals and demonstrates that the terms and provisions of said alleged "Privilege Tax Law" are so drastic and penalties for violation so great that Complainant is precluded from violating same even for the purpose of testing the validity of said law and is compelled to submit to its provisions whether valid or invalid, whether conforming to the Constitution of the United States or in contravention thereof, unless this suit be entertained and relief be granted Complainant as herein prayed for; it being the mandatory duty of Defendant, the State Tax Commission, to cause Complainant to be prosecuted should Complainant not comply with any provisions of said statute, it is the legal duty of Defendant, George T. Mitchell, Attorney-General, to have control and to direct the said criminal prosecution as the legal adviser of said State Tax Commission and the chief legal officer and legal representative of the State of Mississippi and of the said State Tax Commission, in the enforcement of the statute aforesaid, and to represent said State Tax Commission in the enforcement of any other provision of said statute.

[fol. 12] VIII

As a link in the pipe line or lines extending from what is generally known as the Monroe Gas Field in North Louisiana, extending Southeasterly and crossing the Mississippi River into the State of Mississippi at a point, several miles South of Natchez in said state, and continuing through the State of Mississippi and at a point several miles Southeast of Woodville in said state, again crossing the state boundary line into the State of Louisiana, Complainant owns in Mississippi as said link in said interstate pipe line 72.42

miles of pipe having a diameter of twenty-two inches, 8.11 miles of pipe having a diameter of twelve inches and 4.99 miles of pipe having a diameter of ten inches, located in Adams County and in Wilkinson County, State of Mississippi, the annual privilege tax alone attempted to be exacted by said statute would amount to $3,873.65 each year, which because of delinquency in paying would be liable under the provisions of said statute to be doubled each year, during the life of said industry which would amount to an enormous sum and all in addition to the enumerable fines made possible by the provisions of said statute hereinbefore set out.

The primary purpose in the construction of said interstate pipe line was to reach with Complainant's said article of Commerce, Natural gas, the markets for same at Baton Rouge, Louisiana, and at New Orleans, Louisiana, where [fol. 13] some of the largest industries in the United States are located; a small quantity of natural gas is sold in Mississippi flowing from said interstate trunk pipe line or lines by order before leaving the State of Louisiana, on a wholesale basis to a distributor at Natchez and to a distributor at Woodville, all of which is *is* transported through said trunk pipe line or lines from the State of Louisiana in interstate commerce, on order made and agreed upon before the gas is transported from Louisiana. Complainant has never produced any natural gas in the State of Mississippi, or received into its pipe line or lines any natural gas, produced in the State of Mississippi, or from any front therein.

IX

Complainant would with respect further show that the alleged "Privilege Tax Law of 1930" of Mississippi, made exhibit A hereto, and in particular Section 163 thereof and the provisions in connection with and in support thereof that affect Complainant, on information and belief, is not in truth and fact law and cannot properly be enforced now or hereafter, but that the said pretended law, and Section 163 thereof in particular, is unconstitutional because it contravenes Article 1, Section VIII, Clause 3, of the Constitution of the United States and is void and of no force or effect, in that:

(1) It attempts to impose a license on interstate commerce.

[fol. 14] (2) It attempts to place a burden on the privilege of carrying on interstate commerce.

(3) It constitutes a direct burden on the transmission of natural gas, a lawful article of commerce, wholly and exclusively in interstate commerce.

(4) It constitutes an interference with interstate commerce.

(5) It constitutes an obstruction of interstate commerce.

(6) It constitutes an attempted regulation — interstate commerce.

(7) It is an attempted usurpation of the powers delegated to the Congress of the United States by the Constitution of the United States.

X

Complainant would with respect further show that, on the first Monday of July, A. D. 1930, or as soon thereafter as practicable, but not later than the first Monday in August, A. D. 1930, it is the unconditional and mandatory duty of Defendant, the State Tax Commission, to proceed to classify Complainant for the purpose of collecting said unlawful privilege tax and enforcing said statute, which said Defendant is threatening to do and is proceeding to obtain information in regard to Complainant for that purpose, [fol. 15] and Complainant may at any time, now or hereafter, be liable to the many criminal prosecutions possible under the provisions of said statute and it is the mandatory and unconditional duty of said Defendant, the State Tax Commission, to cause not only the civil enforcement of said pretended law against Complainant but also to cause the criminal prosecution of Complainant, and in either proceeding, the same are within the official duties and under the direction and control of the legal adviser and counsel of said State Tax Commission who, as hereinbefore shown, is the Attorney-General of Mississippi; Complainant would with respect further show that the threatened enforcement of said act will be productive of great injury to Complainant and Complainant's property rights, and violative of

Complainant's rights under the Constitution of the United States; Complainant would with respect further show that the enforcement of said act is certainly impending.

XI

Complainant would with respect further show that said Defendants, the State Tax Commission and Attorney-General of Mississippi, as hereinbefore alleged being duly elected, appointed, qualified and acting officers of the State of Mississippi, are charged by said act to exact and collect the said privilege tax from the Complainant, to collect penalties thereon and to prosecute any violation of any pro-
[fol. 16] visions of said act, under and by the terms of said pretended law itself; Complainant believes and alleges that unless the said Defendants are restrained from so doing, they will cause proceedings to be commenced and prosecuted for the collection of said privilege tax, for the enforcement of the penalties thereon and for the many and various prosecutions provided for by the said pretended law against Complainant; Complainant would with respect further show that the enforcement of said pretended law will subject Complainant to irreparable injury and damage to the property rights of Complainant and irreparable loss, both great and immediate, so that complainant would either have to conform to the provisions of said unconstitutional and pretended law or abandon the pipe line or lines hereinbefore described, and that it is not only necessary that said Defendants be restrained and enjoined in the civil enforcement of said pretended law but also in the numerous criminal prosecutions provided for thereunder which is essential to protect the property rights of Complainant, otherwise irremediable.

XII

Complainant is without adequate remedy at law in the premises and only in a suit of this nature and by the injunctive processes of this Court can Complainant be fully protected in the enjoyment of Complainant's property and rights aforesaid, guaranteed and provided for by the Constitution of the United States, and the question here in-
[fol. 17] volved can be adequately determined only in a suit of this nature.

Premises considered, Complainant prays:

First. That the aforesaid act of the Legislature of the State of Mississippi be declared to be in violation and contravention of the rights of Complainant because it is in violation of the Constitution of the United States.

Second. That Defendants, the State Tax Commission of Mississippi, composed of Lester C. Franklin, Chairman, Homer H. Casteel and Webb Walley, and the Attorney-General of Mississippi, George T. Mitchell, be temporarily and permanently enjoined by writ of injunction from enforcing or attempting to enforce in any way or manner the said pretended law or act of the Legislature of the State of Mississippi or any of the provisions thereof, against Complainant, and that said writ of injunction be issued out of and under the seal of this Honorable Court, and that a restraining order issue pending the hearing for a preliminary injunction.

Third. That Complainant may have such other and further relief as is just and equitable, and to good conscience may appertain.

Fourth. And may it please the Court to grant unto Complainant a writ of subpœna of the United States of America directed to said Lester C. Franklin, Chairman, Homer H. [fol. 18] Casteel and Webb Walley, members of the State Tax Commission of Mississippi, and to George T. Mitchell, Attorney-General of Mississippi, as aforesaid, therein to be named, requiring them to appear before this Honorable Court, then and there to answer, but not under oath, answer under oath being expressly waived, plead or demur to Complainant's bill of complaint at a day to be named therein and under certain penalty to be therein expressed.

And as in duty bound Complainant will ever pray.

Interstate Natural Gas Company, Incorporated, by W. Von Phul, W. Von Phul, President. David Clay Bramlette, Solicitor for Complainant.

Duly sworn to by William Von Phul. Jurat omitted in printing.

[fol. 19] [File endorsement omitted.]

[fol. 20] EXHIBIT TO BILL OF COMPLAINT

State of Mississippi

Chapter 88

House Bill Number 517

An Act to Revise the Privilege Tax Laws of the State of Mississippi and to Repeal All Laws in Conflict Therewith, and to Provide Penalties

Section I. Be it enacted by the Legislature of the State of Mississippi, That this Act may be cited as the "Privilege Tax Law of 1930."

Definitions

The term "person" and/or "company" herein used, interchangeably, when used in this chapter, shall be taken to include any individual, firm, partnership, joint adventure, association, corporation, estate, trust, or any other group or combination acting as a unit and includes the plural as well as the singular number, unless the intention to give a more limited meaning is disclosed by the context.

The Term "population" when used in this chapter means the population as shown by the latest published census made by the United States; provided, that when any municipality makes and certifies an enumeration, as provided by law, it shall mean the population shown by such enumera-
[fol. 21] tion; except, that prior to the publication of the Fifteenth census of the United States, it shall mean the population generally reported and accepted as correct, and which may be verified by competent evidence.

The terms "year" and "annually" shall mean either the calendar year or a period of twelve calendar months.

The term "capacity" when used in this act with reference to manufacturing establishments shall mean and shall be determined from the rated capacity of the machinery installed were the same operated on a ten hour schedule daily for the period mentioned.

The term "business" when used in this act shall include all activities or acts personal, professional, or corporate,

engaged in or caused to be engaged in with the object of gain, profit, benefit, or advantage, either direct or indirect, or following and/or engaging in any trade, calling or profession, and all things which occupy the time, attention and labor of men for the purpose of a livelihood or profit.

The term "place of business" when used in this act means a store, shop, counting room, office, factory, or other location or locations, whether in a building, enclosed space, or in any undefined place or places, where any business as herein defined is done, conducted or carried on.

[fol. 22] The term "state license" when used in this act means a privilege license issued by the officer whose duty it is to collect the tax, usable, good and valid in the county named in the license, and it shall be the authority of the licensee to engage in the business designated therein, for the period of time and under the conditions and at the place stated.

The term "state-wide license" when used in this act means a license issued by the State Tax Commission, Commissioner of Insurance, or other officer required to collect the tax, usable, good and valid in each and every county in the State, and shall be the authority of the licensee to engage in the business designated for the period of time, under the conditions specified therein, throughout the entire State.

The term "officer" and/or "collector", when used in this act with reference to officers whose duty it is to collect privilege taxes, means and shall include every officer of the State of Mississippi whose duty it is to collect privilege taxes as by law provided.

The word "taxpayer" when used in this act means any person liable for any tax hereunder, in addition to the usual meaning of such word.

All licenses, whether state licenses or state-wide licenses, shall be good, usable and valid for one year from date thereof, unless a more limited period is shown, but no [fol. 23] license shall be issued for a longer period than one year.

Section 2. Classification of Municipalities.—For the purpose of this chapter the municipalities of this State are divided into seven classes numbered from one to seven, which classes shall be according to the population thereof, as follows:

Class No. 1 shall include all municipalities having a population of 25,000 inhabitants or more.

Class No. 2 shall include all municipalities having a population of 15,000 inhabitants and less than 25,000 inhabitants.

Class No. 3 shall include all municipalities having a population of 10,000 inhabitants and less than 15,000 inhabitants.

Class No. 4 shall include all municipalities having a population of 5,000 inhabitants and less than 10,000 inhabitants.

Class No. 5 shall include all municipalities having a population of 3,000 inhabitants and less than 5,000 inhabitants.

Class No. 6 shall include all municipalities having a population of 1,000 inhabitants and less than 3,000 inhabitants.

Class No. 7 shall include all municipalities having a population of 500 inhabitants and less than 1,000 inhabitants.

[fol. 24] The term "elsewhere in the state" as used in this chapter shall include all municipalities having a population of less than 500 inhabitants, and all other places outside of any municipality.

Section 3. Privilege Taxes Imposed.—Every person desiring to engage in any business, or exercise any privilege hereinafter specified, shall first, before commencing same, apply for, pay for, and procure from the proper officer a privilege license authorizing him to engage in the business, or exercise the privilege specified therein; and the amount of tax shown in the following schedules is hereby imposed for the privilege of engaging and or continuing in the businesses set out therein.

Section 4. State Tax Only.—Unless otherwise specified in this chapter, the tax imposed shall be construed to mean a state tax only.

Section 157. Public Utilities.—There is hereby imposed and levied and shall be collected annual privilege taxes, in addition to any and all other taxes imposed by law upon the persons, firms, co-partnerships, associations, or corporations, for the privilege of carrying on and continuing the businesses, activities, and or exercising powers and rights under the laws of the state of Mississippi, which said tax shall be levied and collected as herein provided.

[fol. 25] Sec. 158. Telephone Company.—Upon each person engaged and or continuing in this state in the business

of operating a telephone business, or maintaining a telephone line, for the transmission of messages and/or conversations to, from, through, in or across this state, as follows:

Upon each person engaged and/or continuing in the state in the business of operating a telephone business, or maintaining a telephone line for the transmission of messages and/or conversations to, from, through, in or across the state, with twenty-five exchanges, or more, for each mile of pole line or conduit operated in this state, $10.00.

Same, with less than twenty-five exchanges, for each mile of pole line or conduit operated in this state, $5.00.

Upon each person engaging and/or continuing in the business of operating a telephone toll line or lines where the operating company does not own or operate a system of telephone exchanges in this state, for each mile of pole line or conduit, as herein defined, operated by said company in this state, $15.00.

The term "pole line" shall include any line of poles or conduit carrying one or more wire circuits upon which messages are transmitted between exchanges, the pole line being measured from toll switchboard to toll switchboard, and shall exclude exchange pole lines unless such exchange pole lines carry toll wires or circuits.

[fol. 26] The tax herein imposed shall apply to all lines of communication, whether jointly owned with some other company or not, and where one company owns the poles and another the wires.

Upon each person operating a telephone exchange, not connected by its own wire or pole with another exchange or exchanges operated by the same person or company, as follows:

Where the number of subscribers is 50 or less, $5.00.

Where the number of subscribers is more than 50 and less than 75, $10.00.

Where the number of subscribers is 75 and less than 100, $15.00.

Where the number of subscribers is more than 100, $25.00.

Upon each person operating a private branch telephone exchange where a charge in excess of five cents is made for connection with any telephone company, or for any message sent or received, or for the service or use of such exchange, for each such Exchange operated, $250.00.

This section shall not apply to telegraph companies that transmit long distance telephone messages or conversations over or along their telegraph pole lines on which the tax imposed as a telegraph pole line has been paid; nor shall it apply to railroad companies that maintain a telephone line for the transmission of messages or conversations, incident to their business.

[fol. 27] Telephone exchanges or lines operated for the convenience of their subscribers and from which no profit inures for the benefit of any individual shall not be required to pay the privilege tax herein imposed.

Sec. 159. Railroad Company.—Upon each person engaging and/or continuing in the business of operating a railroad, a tax on the respective classes as herein provided, as follows:

On each railroad of the first class—per mile, $90.00.
On each railroad of the second class—per mile, $70.00.
On each railroad of the third class—per mile, $50.00.
On each railroad of the fourth class—per mile, $25.00.
On each railroad of the fifth class—per mile, $10.00.

Sec. 160. Telegraph Company.—Upon each person engaging and/or continuing in this state in the business of operating a telegraph business, or maintaining a telegraph line between points in this state for the purpose of conducting a commercial telegraph business, for each mile of pole line, or conduit, operated and/or maintained in this state, $3.50.

The term "pole line" shall include any line of one or more wire circuits, upon which messages are transmitted between stations.

The tax herein imposed shall apply to all lines of communication, whether jointly owned with some other company [fol. 28] or not, and where one company owns the poles and another the wires.

Sec. 161. Sleeping Car Company.—Upon each person engaging and/or continuing in this state in the business of operating a sleeping or palace car business, carrying passengers from one point to another in this state, a tax as follows:

For each mile of first class railroad, over which the company runs its cars in this state, $5.00.

For each mile of second, third, fourth, or fifth class railroad, over which the company runs its cars in this state, $3.00.

But this shall not apply to railroads owning and operating sleeping cars.

Sec. 162. Express Company.—Upon each person engaging and/or continuing in this state in operating an express point to another in this state, a tax as follows:

For each mile of first class railroad over which the cars or business is operated, $6.00.

For each mile of second, third, fourth, and fifth class railroad over which the cars or business is operated, $3.00.

Sec. 163. Pipe Line Company.—Upon each person engaging and/or continuing in thi state in the business of operating a pipe line or transporting in or through this state oil, or natural, or artificial gas, through pipes, and/or conduits, a tax, as follows.

[fol. 29] On each mile of pipe having a diameter of 20 inches or more, $50.00.

On each mile of pipe having a diameter of 15 inches and less than 20 inches, $35.00.

On each mile of pipe having a diameter of 12 inches and less than 15 inches, $25.00.

On each mile of pipe having a diameter of less than 12 inches, $10.00.

The term "pipe line" as used in this section shall include only trunk lines and shall not apply to those pipe lines used solely for distributing gas or oil in or near cities, towns and villages (known as service lines), to those persons, firms, or corporations mining and/or producing gas or oil on which a privelege tax measured by gross production is imposed and paid in this state.

Sec. 164. Application Made to Tax Commission.—Each person required by the foregoing seven sections to pay a privilege tax, doing business in this state, shall annually on or before the first day of June in each year, under oath, make and file with the State Tax Commission an application upon blanks prescribed and furnished by and in such form as the Commission may prescribe, which shall contain:

1. The name of the company.

2. The nature of the Company, whether a person or persons or association or corporation, and under the laws of [fol. 30] what state or county organized.

3. The location of its principal office.

4. The name and post office address of the president, secretary, auditor, treasurer, and superintendent, or general manager.

5. The name and post office address of the chief officer or managing agent of the company in this state.

6. The entire gross earnings, including all sums earned or charged, whether actually received or not for the next preceding calendar year, or fiscal year, from every source derived, and business done within this state; and the total gross earnings of such person, firm or corporation for such period.

7. The total number of miles of railroad track operating within and without this state; the total number of miles of gas mains or pipe lines, and the diameter of same, specifying the number of miles of each diameter of pipe; or total number of miles of railroad over which its business is carried or its cars operated; or the total number of pole miles; but each person shall be required to furnish in his application only the information pertaining to his operation; and such other and further information as the State Tax Commission may require.

[fol. 31] Sec. 165. Tax Commission to Determine Amount of Tax.—The State Tax Commission shall annually, on the first Monday in July, or as soon thereafter as is practicable, but not later than the first Monday in August of each year, classify the several railroads, and the branches thereof, operating through this state in proportion to the gross earnings and/or volume of business of each, into five classes numbered consecutively from one to five; and at the same time shall ascertain and set forth the units to be used in determining the tax due to be paid by the public utilities and/or persons hereinbefore mentioned, and make such classification of the same as will clearly show the amount of tax to be paid by each such public utility, or person, and shall enter its findings on its minutes, and the

same, when made, shall remain open and subject to objections thereto, which may be filed in writing by the taxpayers, for a period of thirty days.

It shall be the duty of the State Tax Commission to hear and determine all objections filed and it may make such correction in its determination, classification, findings, or order as it may deem proper, and its decision in the matter shall be final, except as to the right of such order of findings to be reviewed by a court of competent jurisdiction. The findings, determination, and classification, as made by the said State Tax Commission shall be entered on its min- [fol. 32] utes and a copy thereof certified to the Auditor of Public Accounts to be preserved by him as a record in his office, for the purpose of auditing the proper tax to be collected from the respective taxpayers affected by said order.

Sec. 166. Taxes To Be Paid.—It shall be the duty of the State Tax Commission to send a notice to each such taxpayer of the amount of privilege taxes due by him, and the said tax shall be paid on or before the first day of December in each year, but failure to receive said notice shall not exempt any taxpayer from the payment of damages as imposed by this chapter. Upon the payment of the said tax the State Tax Commission shall issue a statewide license as herein provided.

The privilege tax herein imposed by the foregoing sections on telephone, railroad, telegraph, sleeping car, express, and pipe line companies shall be for statewide purposes, and no board of supervisors, or municipality, shall levy any privilege tax upon any of said companies.

Sec. 219. License; Where Obtained.—All state license shall be obtained from the tax collector of the County where the place of business is located, and all statewide licenses shall be obtained from the State Tax Commission, or the Commissioner of Insurance, except in cases where the law provides that some other officer shall issue the license.

Sec. 220. Taxpayer to Apply for License.—Every person required to obtain a license for the privilege of engaging [fol. 33] in any business for which a privilege tax is required shall make application therefor in writing to the officer who is required to collect the tax; which application

shall be made on the form prescribed by the State Auditor of Public Accounts, except as otherwise provided by law, and which shall contain all the information necessary for the officer collecting the tax to properly classify the applicant or to ascertain the amount of tax due. The application shall be sworn to by the taxpayer, or any officer or duly authorized agent of the said taxpayer, which oath may be administered by any officer required by law to collect a privilege tax. The application shall be accompanied by the amount of the privilege tax required by law. Any person who shall wilfully make any false statement in an application for a privilege license shall be guilty of a misdemeanor, and on conviction thereof shall be required to pay as damage double the amount of the difference between the tax paid and that which should have been paid, in addition to the fine and or imprisonment imposed. The officer taking the application for privilege license shall carefully preserve the same for the use of the grand jury, the Courts of the state and or any duly authorized officer of the State of Mississippi. And any officer who shall refuse or wilfully fail to take or require the application or affidavit herein [fol. 34] required shall be guilty of a misdemeaner and subject to the penalties therefor.

Sec. 221. License to be Issued.—Upon the receipt of the application herein required and payment of the amount shown thereby to be due for the privilege tax, the officer to whom said application is made shall issue to the applicant taxpayer a privilege license according to such application, and shall date the same as of the first day of the month of its issuance, and such license shall be good, usable and valid for one year after the date thereof, or such other period as is fixed by law for the privilege and designated in the license. The officer issuing the license shall countersign the same when issued by him, and he shall enter the same in the register prescribed by law therefor. The license issued by collectors as herein provided shall be executed in triplicate, the original shall by the officer be delivered to the licensee, the duplicate forwarded to the State Tax Commission, and the triplicate attached to the application therefor, and preserved by the officer as a public record. If, however, such officer shall before issuing the said license, or at any time thereafter, have reason to believe that the

statements of the business contained in the application are incorrect or false in any material particular the said officer shall notify the applicant by mail wherein the supposed discrepancy lies, and he hereby is empowered to require the applicant to render such other information as will en- [fol. 35] able him to determine the proper tax due. After making such determination of the proper tax due such officer shall forthwith proceed to collect the same before any license be issued; and if the license shall have been issued under the original application he shall collect the difference between the sum shown to be properly due and the *and the* sum paid with the original application and issue an additional license therefore which shall expire at the same time as the original. If the additional tax be paid within thirty days after the determination by the officer of the amount due no penalty shall be applied. If the taxpayer shall wilfully fail or refuse to furnish the information requested by such officer he shall be liable for damages as in other cases of payment of an insufficient privilege tax, and may be proceeded against civilly or criminally as otherwise provided herein, and shall suffer the penalties provided herein therefor.

Sec. 222. Taxes Required for Several Businesses.—All privilege taxes levied and/or imposed by law shall be paid in addition to any and all other taxes, and any person pursuing and/or engaged in more than one of the businesses for which a privilege tax is imposed shall pay separately the privilege tax imposed upon each separate business so conducted, engaged in or pursued, except as otherwise specifically provided by law, and if the business made taxable or the privilege to be exercised is carried on at two or more separate places a separate license for each place or location of such business shall be provided.

[fol. 36] Sec. 223. License to be Taken Out of Increased Business.—In all cases where a privilege tax is required for carrying on any business in this State and a privilege license has been obtained for the same, and afterwards during the period covered by said license, the licensee shall desire to increase his business to a classification for which a higher privilege tax is required, he shall before increasing same procure an additional license, but shall only be re-

quired to pay, for such additional privilege license, the difference between the amount paid for the original privilege and the amount required to be paid for the privilege license on such higher classification; the same being prorated on the annual rate according to the number of months unexpired remaining in the period for which the original license was issued, and the additional license shall expire at the same time as the original license. The officer issuing the license shall certify on the face thereof that it is an additional license, and the period for which it is issued.

Sec. 224. Officer to Notify All Persons Liable for Privilege.—On or before the first day of each month the collector shall mail to each privilege taxpayer holding an annual license and whose license will expire during the following month, as shown by his record, a notice, that his license will expire and that a new privilege license must be procured during the said following month; and shall [fol. 37] enclose therewith an application blank for a new license; but the failure to send or to receive such notice shall not exempt such privilege taxpayer from any penalties prescribed by law.

Sec. 225. Damages and Penalty for Failure to Procure License.—All persons liable for privilege taxes who shall fail to procure the license therefor before beginning the business for which a privilege tax is required by law, or who shall fail to renew, during the month in which it is due, the license on a business for which he has theretofore procured a privilege license, shall in each or either such instance be liable for double the amount of the tax required for such business, and it is hereby made the duty of the collector whose duty it is to collect the tax on such business to collect the said tax penalty, issue a separate license for the tax, and for the penalty, and to endorse across the face of the license issued as a penalty the words "Collected as Damages"; and they shall account for all such penalties, less commissions, as they are required to account for other privilege taxes. In addition to the hereinabove described penalties the delinquent taxpayer shall be guilty of a misdemeanor and subject to the penalties therefor.

Sec. 226. Post License in Conspicuous Place or Exhibit Same.—Each privilege license issued shall be kept posted

in a conspicuous part of the place of business of the person to whom such license has been issued, where the business [fol. 38] carried on has a permanent location, and if the business is such that the license cannot be so posted, then the licensee shall have such license in his actual possession at the time of carrying on such business or doing the act named; and any officer of the law shall have the right to demand that any transient person exhibit the license to him, and failure of the person to so exhibit his license shall be prima facie evidence that the privilege required of him has not been procured. In all cases where the question arises as to whether a privilege license has been procured, the license or record thereof, if in existence, shall be the only evidence of payment. When a proper holder of a privilege license to engage in any business at any definite location in a county desires to remove the same to another location in the same county, the tax collector shall, upon proper application in writing by the licensee, grant to such person the right to make such move, and shall endorse upon the said license his approval of the change in location.

Sec. 227. License to be a Personal Privilege.—The privilege license herein provided shall be and constitute a personal privilege to the person named therein to conduct the business specified in the license, and shall not be transferable to any other person, and shall be construed to limit to the county and location specified therein the person named [fol. 39] in the license in conducting the business and exercising the privilege named, unless otherwise provided by law, and such license shall not exempt from taxation any property used in the business except as specifically provided by law.

No change in the name of the firm nor the taking in of a new partner, nor the withdrawal of one or more of the firm shall be considered as commencing business; but if any one or more of the partners remain in the firm, the business shall be regarded as continuing.

Sec. 228. Unlawful Business not Legalized.—The issuance of a privilege license or the payment of a tax required therefor shall not make lawful any business, employment, transaction, article or device, or the operation thereof, contrary to any statute of this State, or any ordinance of any municipality thereof.

Sec. 239. Compensation Allowed Tax Collector for Collecting Damages.—On all privilege taxes not paid during the month when due and on which a penalty is collected, the tax collector making such collection shall be entitled to retain one-fourth of said damages, as compensation for his extra services, in addition to the regular commission now allowed by law on regular collections; provided however [fol. 40] that if such collection is made by such tax collector, at the instance of the State Tax Collector, or through his authorized deputies, the said tax collector shall receive only ten per cent of said damages, in addition to the regular commissions allowed by law on regular collections.

Sec. 240. Officer Liable for Taxes Which He Might but Fails to Collect.—The tax officer required to collect privilege taxes shall require all persons liable to pay a privilege tax to pay the same; and he shall cause all persons doing business without a privilege license to be prosecuted. The tax officer required to collect privilege taxes shall be liable for wilful failure to collect the same in the same manner as for failure to collect ad volorem taxes, and the liability of such officer shall extend to all cases where he might collect such taxes but negligently fails to do so. The demand required by this section shall not be necessary to render liable the taxpayer to the penalty of doing business without first paying the tax.

Sec. 241. Monthly Reports.—The privilege taxes paid to the officer collecting same shall be reported by him monthly, and paid in to the State Treasury as other taxes, except as otherwise provided by law, and each such officer shall, within [fol. 41] twenty days after the end of each month, make to the State Auditor of Public Accounts a detailed report of the licenses issued by him during the preceding month, showing the number and date of each license, the name of the licensee, the business for which it was issued, and the amount collected for it, upon such forms as shall be provided by the State Auditor of Public Accounts. At the same time he shall furnish to the State Tax Commission a copy of the report herein required, together with the duplicate of each privilege tax license issued by him during the preceding month. The officer failing to make this report shall be reported by the State Auditor of Public Accounts to the Gov-

ernor as a defaulter, and a failure by the State Auditor of Public Accounts to so report him to the Governor shall render the State Auditor of Public Accounts liable on his bond to the sureties of the officer for all amounts they may be required to pay because of such default. The account of the State Auditor of Public Accounts against the officer for licenses shall be so kept as to show by months what licenses charged to him are in his hands at any time. Upon the final settlement of the officer either annual or at the expiration of his term of office, he shall be credited with all license blanks not issued which have been returned to the State Auditor of Public Accounts and/or delivered to his successor in office; and the officer shall be liable on his bond [fol. 42] in the sum of $100.00 for each license blank not so returned or delivered to his successor in office.

Sec. 242. Penalties.—Any person violating any of the provisions of this chapter shall be guilty of a misdemeanor and on conviction thereof shall be fined not more than $500.00 or imprisoned in the county jail not exceeding six months, or by both such fine and imprisonment in the discretion of the court within the limitations aforesaid; and such fine and imprisonment shall be in addition to any other penalty imposed by any particular section of this chapter (act). The courts of the county in which the offender resides, or if a company, in which it carries on business, shall have jurisdiction to enforce this section.

Sec. 243. Prior Rights or Actions not Affected by This Chapter.—Nothing in this chapter shall affect or defeat any claim, assessment, suit, appeal, right or cause of action for taxes due prior to the date on which this chapter becomes effective, whether such assessment, suit, appeal or claim therefor shall have been begun before the date on which this chapter becomes effective, or shall thereafter be begun; and the law- amended or repealed are expressly continued in full force, effect and operation for the purpose of the assessment and condition of any taxes due under any such laws [fol. 43] prior to the date on which this chapter becomes effective, and for the imposition of any penalty, forfeiture, or claim for a failure to comply therewith; and all privilege tax blanks issued by the State Auditor of Public Accounts

to the tax collectors of the several counties shall be used and be effective for all privilege taxes due under this act, or any other law or laws amended or repealed hereby, and the officers shall not be required to send duplicate of privilege tax licenses to the State Tax Commission until on or after October 1, 1930, but the officers shall send copies of their monthly report to the State Auditor of Public Accounts and to the State Tax Commission as required by this chapter commencing with the report for the first calendar month after the adoption of this chapter.

Sec. 244. That if for any reason any section, paragraph, provision, clause, or part of this chapter shall be held unconstitutional or invalid, that fact shall not affect or destroy any other section, paragraph, clause, or part of this chapter not in and of itself invalid, but the remaining portion hereof shall be in force without regard to that so invalidated.

Sec. 245. That all laws or parts of laws in conflict with the provisions of this Chapter be and the same are hereby repealed, but this repeal is limited to laws governing the administration of privilege tax laws and laws imposing [fol. 44] privilege taxes on persons engaged in business where the privilege tax is now collected by the county tax collectors and/or by the state auditor of public accounts, and/or privilege taxes collected from insurance companies and insurance agents, and premium taxes collected from insurance companies by the Commissioner of Insurance; and it shall in no wise affect any law imposing a tax or fee under the provisions of any special act or chapter where the fee or tax is collected by some other officer or department than those mentioned above; nor filing fees, the fire marshal's tax, penalties or other fees or charges imposed and/or collected by the Commissioner of Insurance as now provided, or may be hereafter provided in the Code chapter on Department of Insurance.

Sec. 246. The privileges taxed by this Chapter shall not be taxed by the Board of Supervisors of any county; nor shall they be subject to taxation by any municipality to an amount exceeding 50% of the amount of the tax specified unless otherwise expressly provided for by law; however, no municipality shall levy any tax on any privilege which

has been duly licensed for statewide purposes as herein provided; nor shall this chapter in any wise affect or impair or change the operation of chapter 259, and 261 of the laws [fol. 45] of 1926, or of chapter 197 of the laws of 1928; nor shall the provisions of this chapter be construed to limit or restrict the power or authority of the board of levee commissioners of the Yazoo-Mississippi Delta Levee District to levy and collect privilege taxes for the benefit of the said district, as heretofore or hereafter provided by said board, under the provisions of that certain act of the Legislature of the State of Mississippi entitled, "An Act to authorize and empower the board of levee commissioners for the Yazoo-Mississippi Delta, to levy a tax upon all privileges exercised within the said levee district," approved February 26th, 1902, and being Chapter 80, Page 132 of the Laws of 1902.

Sec. 247. That this Act take effect and be in force from and after the first day of June, 1930, A. D.

Having purposely permitted this bill to remain in my office over the constitutional five days, it has become a law without my signature. This the 10th day of May, 1930.

Theo. G. Bilbo, Governor.

[fol. 46] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF D. C. BRAMLETTE—Filed June 30, 1930

STATE OF MISSISSIPPI,
Wilkinson County:

Personally appeared before me, the undersigned authority in and for the said county and state, D. C. Bramlette, who having been duly sworn upon his oath states that he is Solicitor for Interstate Natural Gas Company, Inc., Complainant in the above entitled suit, that as such Solicitor for Complainant, aforesaid, he was given notice by Honorable Lester C. Franklin, Chairman of the State Tax Commission of the State of Mississippi, that Chapter 88 of the

Laws of 1930, of Mississippi designated as "House Bill No. 517," and also designated therein as the "Privilege Tax Law of 1930" of Mississippi, would be enforced against Interstate Natural Gas Company, Inc., Complainant in the above entitled suit, and further, said Solicitor and Affiant was informed by the Tax Assessor of Wilkinson County, Mississippi, John L. Hays, that the State Tax Commission [fol. 47] of Mississippi was obtaining information and facts from said tax assessor preliminary to enforcement of said statute against Interstate Natural Gas Company, Inc., Complainant in the above entitled suit.

D. C. Bramlette.

Sworn to and subscribed before me this 28th day of June, A. D. 1930. —— ——, Notary Public.

[File endorsement omitted.]

[fol. 48] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION FOR WRIT OF INJUNCTION—Filed June 30, 1930

Now comes the Complainant in the above entitled suit, Interstate Natural Gas Company, Inc., by Solicitor, and moves this Honorable Court to grant a writ of injunction against said Defendants and each of them, pending this suit, and until the further order of the court, conformable to the prayer of the bill of complaint in said suit.

David Clay Bramlette, Solicitor for Complainant.

[File endorsement omitted.]

[fol. 49] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER TO ISSUE RESTRAINING ORDER, ETC.—Filed July 1, 1930

This cause coming on this day to be heard in vacation, before Honorable Edwin R. Holmes, Judge of the United

States District Court for the Jackson Division of the Southern District of the State of Mississippi, on the application of the Complainant for a temporary injunction against the Defendants;

It is therefore ordered, adjudged and decreed that the hearing of this cause on the application for a preliminary injunction shall be held at New Orleans, Louisiana, on the 15th day of July, A. D. 1930, and the judge of this court hereby requests the Honorable Rufus E. Foster, of New Orleans, Louisiana, a Judge of the Circuit Court of Appeals, and Allen Cox, of Baldwyn, Mississippi, a Judge of the District Court within this Circuit, to sit with him at the said hearing, and that pending said hearing a restraining order issue as prayed for when complainant giving bond

[fol. 50] in the sum of $1,000.00 as provided by law.

It is further ordered that the clerk of this court shall mail a copy of this order to the Attorney-General of the State of Mississippi, and a copy of this order to the Governor of the State of Mississippi, and to each of the Defendants named herein.

Ordered, adjudged and decreed, in vacation, this 30th day of June, A. D. 1930.

E. R. Holmes, Judge.

[File indorsement omitted.]

[fols. 51 & 52] Bond on restraining order for $1,000.00, approved and filed July 1, 1930, omitted in printing.

[fol. 53] IN UNITED STATES DISTRICT COURT

[Title omitted]

RESTRAINING ORDER AND MARSHAL'S RETURN—Filed July 1, 1930

Whereas, in the above cause, a motion for the issuance of a preliminary writ of injunction having been duly filed, the hearing being fixed for the 15th day of July, A. D. 1930, in New Orleans, Louisiana; and it having been made to ap-

pear that there is danger of irreparable injury being caused to complainant, before the hearing of said application for the writ of injunction, unless the said defendant are, pending such hearing, restrained as herein set forth;

Now, therefore, take notice that you, L. C. Franklin, Chairman, H. H. Casteel and Webb Walley, all members and constituting the State Tax Commission of Mississippi, and George T. Mitchell, Attorney-General of Mississippi, defendants herein, your agents, servants and attorneys and each of you, are hereby specially restrained and enjoined from enforcing or attempting to enforce in any way or manner, against complainant, the law or act of the Legislature of the State of Mississippi, or any of the provisions [fol. 54] thereof designated as chapter 88 of the laws of 1930 of Mississippi, and further designated as House Bill No. 517, or the "Privilege Tax Law of 1930" of Mississippi, until further order of this court in the premises.

Witness, the Honorable E. R. Holmes, Judge of the District Court of the United States Southern District of Mississippi, Jackson Division, this 1st day of July, 1930.

B. L. Todd, Jr., Clerk.

[File endorsement omitted.]

Return

Received this writ at Jackson, Miss., on July 1, 1930, and on July 1, 1930, executed same at Jackson, Miss., by handing copy of this writ to the within named L. C. Franklin, Chairman, H. H. Casteel and by leaving copy with the said L. C. Franklin for the said Webb Walley and by handing copy to Attorney General Geo. T. Mitchel.

J. C. Tyler, Marshal, by J. H. Gearhart, Deputy.

Fo. 408.
Entered —— —, ——.
No. 4638.

[fol. 55] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF F. H. LERCH, JR.—Filed July 1, 1930

STATE OF LOUISIANA,
Parish of Ouachita:

Personally appeared before me, the undersigned authority in and for the said State of Louisiana and Parish of Ouachita therein, F. H. Lerch, Jr., who having been duly sworn upon his oath states that he is General Manager of Interstate Natural Gas Company, Inc., Complainant in the above entitled suit, and that he is serving and has served in such capacity for more than one year, and that said Interstate Natural Gas Company, Inc., Complainant in said suit, is the owner of a pipe line extending from the State of Louisiana, through the State of Mississippi and again through the State of Louisiana, that said pipe line is not operated for the use of the public, that a small quantity of natural gas is sold on a wholesale basis to a distributor at Natchez in the State of Mississippi and to a distributor at Woodville, in the State of Mississippi, all of which flowing from said pipe line or lines from the State of Louisiana without being stored in the State of Mississippi for any time or in any quantity and by order before said natural gas leaves the State of Louisiana all of said transportation [fol. 56] or transmission of said natural gas through and into the State of Mississippi, being in continuous transit without interruption and wholly and exclusively an interstate commerce, and that said Interstate Natural Gas Company, Inc., Complainant, does not acquire any natural gas within the State of Mississippi and does not transport any natural gas from any origin in Mississippi and does not disburse or retail natural gas in the State of Mississippi; that the only pipe line or lines owned by Interstate Natural Gas Company, Inc., in the State of Mississippi, is a link in the said interstate pipe line from the State of Louisiana, there being in the State of Mississippi 72.42 miles of pipe having a diameter of 22 inches 8.11 miles of pipe having a diameter of 12 inches and 4.99 miles of pipe having a diameter of 10 inches, all located in Wilkinson County and

Adams County, State of Mississippi, and used wholly and solely and exclusively in the transmission of natural gas from the State of Louisiana.

F. H. Lerch, Jr.

Sworn to and subscribed before me this 30th day of June, A. D. 1930. Clyde R. Brown, Notary Public.

[File endorsement omitted.]

[fol. 57] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF A. H. SALISBURY—Filed July 1, 1930

STATE OF LOUISIANA,
Parish of Ouachita:

Personally appeared before me, the undersigned authority in and for the said State of Louisiana and Parish of Ouachita therein, A. H. Salisbury, who having been duly sworn upon his oath states that he is Assistant Treasurer of Interstate Natural Gas Company, Inc., Complainant in the above entitled suit, and that he is serving and has served in such capacity for more than one year, and that said Interstate Natural Gas Company, Inc., Complainant in said suit, is the owner of a pipe line extending from the State of Louisiana, through the State of Mississippi and again through the State of Louisiana, that said pipe line is not operated for the use of the public, that a small quantity of natural gas is sold on a wholesale basis to a distributor at Natchez in the State of Mississippi and to a distributor at Woodville, in the State of Mississippi, all of which flowing from said pipe line or lines from the State of Louisiana without being stored in the State of Mississippi for any time or in any quantity, and by order before said natural gas leaves the State of Louisiana all of said transportation or transmission of said natural gas through and into the State of Mississippi, being in continuous transit without [fol. 58] interruption and wholly and exclusively and interstate commerce, and that said Interstate Natural Gas Company, Inc., Complainant does not acquire any natural gas

within the State of Mississippi and does not transport any natural gas from any origin in Mississippi and does not disburse or retail any natural gas in the State of Mississippi; that the only pipe line or lines owned by Interstate Natural Gas Company, Inc., in the State of Mississippi, is a link in the said interstate pipe line from the State of Louisiana, there being in the State of Mississippi 72.42 miles of pipe having a diameter of 22 inches 8.11 miles of pipe having a diameter of 12 inches and 4.99 miles of pipe having a diameter of 10 inches, all located in Wilkinson County and Adams County, State of Mississippi, and used wholly and solely and exclusively in the transmission of natural gas from the State of Louisiana.

A. H. Salisbury.

Sworn to and subscribed before me this 30th day of June, A. D. 1930. Clyde R. Brown, Notary Public.

[File endorsement omitted.]

[fol. 59] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER—Filed Sept. 23, 1930

To the Honorable Judges of the United States District Court:

Now comes the State Tax Commission of the State of Mississippi, composed of Lester C. Franklin, Chairman, Homer H. Casteel and Webb Walley, and George T. Mitchell, Attorney General of the State of Mississippi, defendants in the above styled and numbered cause, and reserving unto themselves all manner of right to object to the many imperfections, insufficiencies and errors contained in the original bill of complaint herein filed against them and answering so much and such parts of such bill as it appears necessary and material to answer, say:

[fol. 60] I

That defendants have no knowledge as to whether the complainant is a Delaware corporation and an actual resi-

dent citizen of the State of Delaware and of the United States, or not.

II

That the defendants admit the allegations of the bill herein filed with respect to the membership, election and qualification of the State Tax Commission and with respect to the residence and citizenship of such members, and their official office.

Defendants further admit the allegations with reference to the election and qualification of defendant George T. Mitchell as Attorney General of the State of Mississippi and the official location of his office, and that all of said defendants hold their respective official positions under and by virtue of the laws of the State of Mississippi.

III

Defendants deny that an extremely small quantity of the lands, if any, the complainant owns in Louisiana but admit that natural gas is a lawful article of commerce and that complainant owns and operates for the transportation or transmission of its natural gas a pipe-line, or lines, extending from the State of Louisiana through the State of Mississippi and again into the State of Louisiana.

Defendants deny that an extremely small quantity of the gas flowing from said pipe line, or lines, is sold in the State [fol. 61] of Mississippi, and they neither admit nor deny that such gas flows from said pipe line, or lines, without being stored for any time, or in any quantity, as defendants aver that they have no knowledge as to such facts.

Defendants deny that the said natural gas, which flows through the said pipe line, or lines, of complainant, is sold to distributors at two points in the State of Mississippi upon and order given before said gas leaves the State of Louisiana and defendants deny that all said transportation or transmission of natural gas through and into the State of Mississippi is in continuous transit without interruption and wholly and exclusively in interstate commerce.

Defendants aver that said gas, the property of the complainant, flow through the complainant's pipe line, or lines, in the State of Mississippi and when said gas reaches the cities of Natchez and Woodville respectively a part, or

parts of it is sold then and there to the Mississippi Power and Light Company and the City of Woodville, distributors, and to the consumers in Natchez and Woodville, respectively.

Defendants aver that the Central Power and Light Company and said City of Woodville each entered into a contract with the complainant, copies of which contracts are attached hereto as Exhibits "A" and "B" hereof and are made a part hereof the same as though fully set out herein, [fol. 62] and defendants aver on information and belief that said Central Power and Light Company's contract with complainant was subsequently assigned to the Mississippi Power and Light Company.

Defendants further aver that the said gas purchased by said distributors from the complainant flows continuously through the points of delivery at Natchez and Woodville respectively where the pipe line of the complainant is tapped and where a meter furnished and provided by complainant measures the amounts of gas purchased by the said distributors at Natchez and Woodville respectively, and defendants aver that said transportation, transmission, sale and delivery and measurement of natural gas by the complainant to the distributors constitute acts of interstate commerce or business.

IV

Defendants deny the complainant's allegations with reference to the jurisdiction of this court but aver that such facts should be clearly proven by competent evidence.

V

Defendants admit the allegations of complainant's bill with reference to the passage and enactment and provisions of House Bill No. 517, or chapter 88 of the Laws of 1930 but defendants deny that said statute is in contravention of the Constitution of the United States in that it attempts to inflict a privilege tax upon complainant as a person transporting through and into the State of Mississippi in interstate commerce natural gas through pipes. [fol. 63] Defendants admit complainant's allegation with reference to the Attorney General being the chief legal

adviser and representative of the State Tax Commission and the State of Mississippi.

VI

Defendants admit the complainant's allegation with reference to section 163 of the Mississippi Privilege Tax Law of 1930 and also complainant's allegations with reference to sections 164, 165, 166, 219, 225, 240, and 242 of said law.

Defendants admit that complainant is not within the exception set out in said section 163, as complainant pays no privilege tax measured by gross production, or otherwise, in the State of Mississippi.

VII

Defendants admit complainant's allegations with respect to the duty of the defendant, State Tax Commission, to exact and collect the privilege tax provided for in said section 163, from complainant, and defendants admit that the penalties provided for by the Mississippi Privilege Tax Law, 1930, might be collected for the violation of the provisions of said law.

Defendants further admit that it is the duty of the Attorney General to control the litigation and direct and advise the State Tax Commission in the enforcement of the aforesaid statute.

[fol. 64]

VIII

Defendants admit complainant's allegations with reference to the number of miles of pipe and the size of such pipe owned by complainant in the State of Mississippi.

Defendants admit that the annual privilege tax under said section 163 would amount to $3,873.65 each year.

Defendants aver that they have no knowledge as to the primary purpose of the complainant in the construction of its pipe line, or lines, which furnish gas to the said distributors at Natchez and Woodville.

Defendants deny that a small quantity of natural gas, or any natural gas whatsoever, is sold in Mississippi from the pipe line of the complainant by order received before said gas leaves the State of Louisiana.

Defendants admit that complainant sells natural gas from its pipe line on a wholesale basis to a distributor at

Natchez and to a distributor at Woodville, but denies that such gas so sold to said distributors is sold from said trunk pipe line in interstate commerce on order made and agreed upon before the gas is transported from Louisiana.

Defendants aver that the said gas which the said complainant has sold and is now selling to said distributors at [fol. 65] Natchez and Woodville is sold to said distributors in accordance with the written contracts attached hereto as Exhibits "A" and "B" hereto and is sold in the State of Mississippi at the points, or locations, where the complainant's trunk pipe line is tapped at or near Natchez and Woodville respectively, and defendants aver that complainant has no knowledge as to when or in what quantity gas will be purchased from them by the said distributors at Woodville and Natchez, until said gas flowing through said pipe lines of complainant reaches the said points near Natchez and Woodville respectively where said line is tapped, and said gas is then and there measured and sold.

Defendants further aver that the said distributors at Natchez and Woodville have no storage tank or tanks for the storing of natural gas with which to supply their respective consumers in case of the failure of the complainant's supply, except that the distributor at Natchez has a small storage tank which would supply its customers for approximately fifteen to thirty minutes.

IX

Defendants deny that the said Privilege Tax Law, 1930, of Mississippi, and particularly section 163 thereof, and the provisions in connection therewith, is not in truth and fact law and cannot properly be enforced now or hereafter, and [fol. 66] defendants deny that said law, and section 163 thereof in particular, is unconstitutional, because it contravenes Article 1, section 8, clause 3, of the Constitution of the United States, and defendants deny that said law is void and of no effect in that it attempts to impose a license or burden on, or to interfere with, or to obstruct, or to regulate interstate commerce, or that it is an attempted usurpation of the powers delegated to the Congress of the United States by the Constitution of the United States.

Defendants aver that said law, and particularly section 163 thereof, is constitutional in that it merely places a tax upon the privilege of carrying on in this state the business of operating a pipe line and is merely an occupation tax on intrastate business.

X

Defendants admit all of complainant's allegations with respect to the classification of complainant and collection by the State Tax Commission of said tax by the means provided in said law and with reference to the official duties of the State Tax Commission and the Attorney General.

Defendants deny that the enforcement of said act will be productive of great injury to complainant and com- [fol. 67] plainant's property rights and violative of complainant's rights under the Constitution of the United States.

Defendants admit that the enforcement of said act is certainly impending.

XI

Defendants admit that they are charged by said act to exact and collect said tax from said complainant and to collect penalties thereon and to prosecute violations thereof, and defendants admit that they will attempt to enforce the collection of said tax and the other provisions of said law, but defendants deny that the enforcement of said law will subject complainant to irreparable injury and damage to property rights of complainant and irreparable loss, both great and immediate, and defendants deny that said law is unconstitutional and deny that the complainant would either have to conform to the provisions of said unconstitutional and pretended law or abandon the pipe line, or lines, hereinbefore described, and deny that complainant's allegation with reference to the necessity that defendants be restrained and enjoined in enforcing said law, either civilly or criminally to prevent irremedial injury to the property rights of complainant.

XII

Defendants admit that complainant is without adequate [fol. 68] remedy at law and admit that the question in-

volved can be adequately determined only in a suit of this nature, but deny that the injunctive processes of this court should issue to protect complainant in the enjoyment of its property and rights guaranteed and provided for by the Constitution of the United States.

Defendants further aver that the complainant is not entitled either to bring this suit or to have any of the relief prayed for in its original bill.

And now having fully answered, defendants pray that they be dismissed with their reasonable expenses and costs herein incurred.

Geo. T. Mitchell, Attorney General of the State of Mississippi, by E. R. Holmes, Jr., Special Agent, Solicitor for State Tax Commission of the State of Mississippi, Composed of Lester C. Franklin, Chairman; Homer H. Casteel, and Webb Walley, and on His Own Behalf.

[File endorsement omitted.]

[fol. 69] Agreed statements of facts on the hearing for motion for preliminary injunction same as agreed statement of facts on hearing for perpetual injunction. See page 102.

[fol. 70] EXHIBIT "A" TO ANSWER

Interstate Natural Gas Company, Inc., and Central Power & Light Company

This agreement, made and entered into this 10th day of March, A. D. 1927, by and between the Interstate Natural Gas Company, Incorporated, a corporation organized and existing under the laws of Delaware, and the Central Power & Light Company, a corporation organized and existing under the laws of Massachusetts,

Witnesseth: That whereas the Interstate Natural Gas Company, Incorporated, is constructing a pipe line from its natural gas properties in the Monroe Gas Field to the refinery of the Standard Oil Company of Louisiana near

Baton Rouge to supply gas for the fuel requirements of said refinery and is desirous of disposing of its surplus gas; and

Whereas, the Central Power & Light Company, which distributes artificial gas in Natchez, Mississippi, proposes to convert its plant to a natural gas system and desires to purchase from said Interstate Natural Gas Company, Incorporated, its supply of natural gas under the terms hereof;

Now, therefore, this agreement between the Interstate Natural Gas Company, Incorporated (hereinafter called the "Vendor") and the Central Power & Light Company (hereinafter called the "Vendee"), the corporations re- [fol. 71] ferred to,

Witnesseth:

1. Subject to the terms, conditions and limitations hereinafter set forth and to the full extent of the legal capacity, ability and the right of the Vendor and Vendee to so contract and to that extent only, Vendor agrees to sell and deliver and Vendee agrees to purchase and receive from the Vendor all of the natural gas necessary to meet the requirements of the various consumers as hereinafter defined supplied by the Vendee in the City of Natchez, Mississippi, for a term of ten years, commencing from the date gas is first delivered to the Vendee hereunder, which date shall not be earlier that the first day of March, 1927, nor later than the first day of May, 1927. The Vendee agrees that so long as the natural gas delivered to it hereunder is sufficient, it will supply only natural gas delivered hereunder to its customers in Natchez.

The Vendee, in addition to supplying consumers in the City of Natchez as at present delimited or as may later be extended, shall have the right to sell gas purchased hereunder to consumers located along the transmission pipe line to be presently built by Vendee between the point of delivery by Vendor and the City limits of Natchez.

II. Said Vendee shall construct and install and have in readiness for operation not later than April first, 1927, nor earlier than March first, 1927, a system for the distribution [fol. 72] of natural gas in the City of Natchez, of such capacity and general design as will enable it to furnish an

efficient and adequate supply of natural gas through said City at a pressure as uniform as is practicable and shall construct a pipe line or lines therefrom to a tap outside the City limits of the City of Natchez in Vendor's twenty two inch pipe line, located on the Minor Plantation, South of Natchez, and shall co-operate with the Vendor in order that the Vendor may install a connection of Vendor and Vendee's pipe lines at that point so that the natural gas to be received from said Vendor may be conducted in and throughout the Vendee's entire system of pipe lines to which any of the patrons of the Vendee may be connected.

III. The Vendor agrees that the delivery of gas to the Vendee shall be at or about a pressure of fifty pounds per square inch above atmosphere, and further agrees to install and maintain at the point of delivery the necessary regulator to accomplish delivery at or about said pressure. Vendee agrees to receive and take the gas hereunder at the aforesaid pressures of delivery and thereafter regulate and control the same for delivery to its consumers.

The unit of measurement under this contract shall be one thousand cubic feet of gas at a temperature of sixty degrees Fahrenheit and at a pressure of eight ounces gauge according to Boyle's Law for the measurement of gas at [fol. 73] varying pressures, and for purposes of measurement the average absolute atmospheric (or barometric) pressure shall be assumed to be 14.6 pounds irrespective of actual elevation or location above sea level or variations in such barometric pressure from day to day; the specific gravity and flowing temperature of the gas at the place of measurement shall be determined as follows:

A test made at the beginning of gas deliveries shall determine the specific gravity and flowing temperatures for the three months following and thereafter actual tests shall be made each three months, the mean average of the tests at the beginning and at the end of each three months' period to determine the gravity and flowing temperatures to be used in the three months' period next following. The temperature test shall be made by averaging the temperature shown for twenty four consecutive hours, as determined by the record of a recording thermometer installed at the place of measurement.

IV. It is agreed that the vendor shall erect and maintain at its own expense at the delivery point hereinbefore mentioned a measuring station, properly equipped with a Westcott orifice meter or other type of meter or meters of standard style as may mutually be agreed upon, the measurements of which shall fix the total amount of gas delivered to the Vendee by the Vendor. When the above meter or meters have been installed they shall be deemed the ex- [fol. 74] clusive method of measuring all gas delivered and sold under this contract, and the Vendee shall be entitled to have access to the meter at all reasonable times.

On request of the vendee all meters in service at the said measuring station shall be tested by the Vendor at its own expense in the presence of the Vendee's representative, if the Vendee desires to be represented at such test and sends his representative to be present at the time set for the test; such time shall be set promptly by the Vendor on receiving two (2) days' written notice from the Vendee.

Any meter being found, on test, to register not more than two percent (2%) fast or slow shall be deemed to be correct. In the event of any meter, upon test, proving to be more than two percent (2%) fast or slow, adjustment shall be made for the gas delivered during the period such meter was registering inaccurately, which period shall not in any event be deemed to extend prior to the last monthly statement preceding the one giving rise to complaint or request for test, adjustment to be as follows: Where the meter shall be registering in excess of two percent (2%) fast or slow, the volume of gas shall be decreased or increased, respectively, in an amount equal to half the inaccurate registration. During the time any meter is out of repair, or is [fol. 75] being tested, or in the event that the Vendor's meters become inoperative or manifestly in error and the Vendee has not installed check meters as provided in the following paragraph of this section, or if such check meters have been installed and fail to register or are manifestly in error, then the quantity of gas delivered during the period the Vendor's meter was inoperative or manifestly in error shall be determined by estimating as nearly as may be possible the quantity of gas delivered hereunder during proportionate periods under similar conditions when such meter or meters were registering accurately, or substan-

tially so, provided that in the event the Vendor or the Vendee shall be unable to agree upon any adjustment for any period when it becomes necessary thus to estimate the quantity of gas delivered in other proportionate periods under similar conditions, then the matter shall be determined by three disinterested arbitrators,—one to be appointed by the Vendor, one to be appointed by the Vendee, and the two so appointed to select a third. The decision of such arbitrators or any two of them shall be final, and the cost of such arbitration shall be paid one-half by the Vendor and one-half by the Vendee.

If either party to this agreement neglects or fails for the period of two weeks after notice from the other party, to designate an arbitrator hereunder, then the party request-
[fol. 76] ing such arbitration shall request one of the Judges of the Court of the State of Mississippi to name an arbitrator, such arbitrator so named shall act as the nominee of the other party and his decision shall in all respects be binding upon the other party, and such two arbitrators shall name the third and proceed with the arbitration in accordance with the laws of the State of Mississippi made and approved for such cases, their decision to be conclusive and binding upon the parties hereto, and each of their successors and assigns.

It is further agreed that the Vendee shall be entitled to install and operate at its own expense, near the delivery point, such Westcott meter or other meter or meters of standard type as may be mutually agreed upon, as shall enable the Vendee to check the amount of gas delivered to the Vendee by the Vendor and measured by the meters of the Vendor. If the Vendee shall exercise this right of installing and operating meters, then in the event of the failure of the meters of the Vendor to register accurately at any time, the registration of the meters of the Vendee, instead of the estimated quantity above provided for, shall be taken as the current quantity of gas delivered by the Vendor to the Vendee, provided, of course, the meters of the
[fol. 77] Vendee are correct, within the above variation, until such time as the meter or meters of the Vendor shall be adjusted, repaired or replaced. If the registration of the meters of the Vendee is used to determine the quantity of gas delivered by the Vendor to the Vendee, the meters of

the Vendee shall be tested at such time and at the same periods of time and under the same conditions as provided herein for the meters of the Vendor.

V. The prices to be paid by the Vendee to the Vendor hereunder shall be as follows:

Thirty five cents (35¢) per M for gas sold to domestic and commercial consumers.

Twenty cents (20¢) per M for gas sold to industrial consumers.

All unaccounted for gas (by which is meant the difference between the gas purchased by the Vendee from the Vendor at its pipe line and the total amount of gas metered and sold by the Vendee to industrial and domestic consumers) is to be computed and paid for by the Vendee at the rate of twenty cents (20¢) per M C. F.

By "domestic consumers" as used in this contract is meant all those consumers using gas in domestic service in their residences and is defined as including the reasonable use of natural gas for heating, lighting and cooking in private homes and apartment houses.

By "commercial consumers" as used in this contract is meant all those consumers using gas for any purpose whatsoever in non-residential locations and to an extent less [fol. 78] than 100,000 cubic feet in any one month.

By "industrial consumers" as used in this contract is meant all those consumers using gas for any purpose whatsoever in non-residential locations and to an extent greater than 100,000 cubic feet in any one month.

VI. All meter charts when removed from the meter or meters of the Vendor or records of registration taken shall be forwarded to the office of the Vendor for computation and check, whereupon the Vendor shall forward them to the Vendee, as may be directed, for check and inspection. After making such check and inspection as desired, the Vendee shall, within a reasonable time, return said charts or records of registration to the Vendor to be kept in permanent files and for the future reference of both parties hereto. The Vendee shall, on or before the tenth of each calendar month, render a statement to the Vendor showing the quantity of gas sold by the Vendee to its industrial consumer in the preceding calendar month, based on readings

of the industrial consumers' meters taken as near the end of such month as is practicable. The Vendor at four o'clock p.m. of the last day of each calendar month shall read its meter measuring all gas delivered to the Vendee and shall, on or before the fifteenth day of each calendar month, ren- [fol. 79] der a statement to the Vendee showing the quantity of gas delivered to the Vendee during the preceding calendar month and the amount payable therefor by the Vendee at the prices above set forth applied to the measured quantities.

For the purpose of monthly billing, but for that purpose only, it shall be assumed that the lost and unaccounted for gas to be paid for by the Vendee to the Vendor at twenty cents (20¢) per thousand cubic feet is ten percent (10%) of the total quantity of gas registered through the Vendor's meter or meters at the delivery point and monthly settlement shall be made by the Vendee to the Vendor on that basis.

The amount of gas lost so computed, added to the amount consumed by the Vendee's industrial consumers, shall be deducted from the total amount registered by the Vendor's meter at the delivery point and the difference between this amount shall be considered for monthly billing purposes the amount of gas delivered by the Vendor to the Vendee for the purpose of supplying Vendee's domestic and commercial consumers and shall be paid for by the Vendee at the prices above set forth.

On January tenth of each year, however, the Vendee shall deliver to the Vendor a statement showing the amount of gas actually accounted for, through its consumers' meters, and at that time an adjustment shall be made and [fol. 80] the difference, if any, between the ten percent (10%) gas lost assumed for billing purposes and the gas actually lost shall be rectified and payment made by one to the other as the actual quantity of gas lost or not accounted for by the Vendee's consumers' meters may be found to be greater or less than ten percent (10%). Such adjustment shall be completed and payment made on or before January twentieth of each year by one to the other in accordance with the credit or debit balance established.

On or before the twentieth day of each calendar month the Vendee shall pay to the Vendor at Monroe, Louisiana, for

all gas delivered by the Vendor to the Vendee during the preceding calendar month according to the gas measurements and computations and at the prices hereinbefore provided for.

It is understood and agreed that no allowance shall be made for leakage, it being the intention of the parties hereto that all gas delivered by the Vendor to the Vendee shall be paid for by the Vendee to the Vendor as above stipulated.

And it is expressly agreed that no allowance shall be made on account of failure of the Vendee to collect from any of its consumers and the Vendee shall pay to the Vendor for such gas at the rate hereinbefore stipulated. No deduction on account of lost gas arising out of an allowance by the Vendee to a consumer because of a defective meter [fol. 81] shall be recognized.

VII. The Vendee shall use reasonable diligence to keep its system in proper repair, free from leaks and loss, and generally in good and efficient condition.

The Vendee shall keep proper books, records and accounts according to approved methods so as to reflect accurately the total quantity of gas sold to all classes of consumers.

The Vendor shall have the right at all reasonable times to go upon the property of the Vendee and to make such inspection and investigation of same as it desires, and this shall include the right to inspect the Vendee's books, accounts, meters and records for the purpose of informing itself as to the sales of gas and the condition of the Vendee's plant and system, including all meters and the operation of same; for the Vendor's information in the settlement of accounts between the parties hereto.

The Vendee also agrees to use its best endeavors to keep the gas in its mains and throughout its entire system at as nearly as constant and uniform pressure as possible to furnish an efficient and adequate supply of natural gas throughout said City.

VIII. The Vendee hereby expressly acknowledges that the production of natural gas from wells and the transportation thereof over long distances is subject to accidents, interruptions, diminutions of pressure and failures [fols. 82 & 83] of supply. The Vendor, however, expressly agrees that it will exercise reasonable diligence and care

to avoid any shortage or interruption of supply of natural gas hereunder, but it shall not be liable for any damage or loss that may be occasioned by any shortage or failure or shortage of production of gas wells, or fields, breakage or accident to lines, or equipment, fires, strikes, riots, floods and other acts of whatever nature, due to causes beyond the control of the Vendor and interruptions by governmental or court orders. Vendor shall only be bound to furnish natural gas to the full extent that it may be able to do so through the exercise of reasonable care and diligence in the production of gas from the properties it owns and in the transportation of gas so produced and of gas from its gas purchase contracts through its lines to the point of delivery to the Vendee and at such pressure and for such period of time as gas is available.

It is expressly recognized by the Vendee that the Vendor may interrupt its service hereunder for the purpose of making necessary alterations and repairs, but only for such time as may be reasonable or unavoidable, and the Vendor shall give to the Vendee, except in case of an emergency, reasonable notice of its intention so to do, and shall endeavor to arrange such interruption so as to inconvenience the Vendee and its consumers as little as possible.

The obligations of the Vendor hereunder are at all times subject to any obligations in prior contracts having legal [fol. 84] preference.

Subject to said preference, it is agreed that in case of shortage of natural gas and necessity for curtailment of service to any classes either temporarily or permanently, domestic consumers shall be the last class to be curtailed and Vendee's domestic consumers shall share the available supply pro rata with any other domestic consumers whose supply comes from Vendor's pipe line. Nothing herein contained shall in any way abridge the right of the Vendor at any time to sell, transport and deliver gas to others than the Vendee or restrict or reserve the Vendor's properties or any part of them for the exclusive benefit of this contract.

IX. If, for any period of time during the term hereof, the Vendor shall be unable or fail to deliver the full amount of natural gas required by the Vendee hereunder, then the Vendee shall have the right, during such time as the Ven-

dor so fails to furnish the required amount of gas, to purchase or otherwise obtain gas from any available source or manufacture gas to supply such portion of the requirements of its consumers as is not obtainable from the Vendor.

X. The Vendor shall not be responsible for the condition of the Vendee's distributing system and appliances and shall not be liable for, and the Vendee agrees to indemnify the Vendor against and save it harmless from, damages or losses to the employees or property of the Vendee or to the persons or property and others resulting from explosions or fire or from any cause whatsoever [fol. 85] arising from the sole negligence of the Vendee, its agents or employees.

The Vendee shall not be responsible for the condition of the Vendor's transmission system and appliances and shall not be liable for, and the Vendor agrees to indemnify the Vendee against and save it harmless from damages or losses to the employees or property of the Vendor or to the persons or property of others resulting from explosions or fire or from any cause whatsoever from the sole negligence of the Vendor, its agents or employees.

The Vendee shall not be responsible for the condition of the Vendor's transmission system and appliances and shall not be liable for, and the Vendor agrees to indemnify the Vendee against and save it harmless from, damages or losses to the employees or property of the Vendor or to the persons or property of others resulting from explosions or five or from any cause whatsoever arising from the sole negligence of the Vendor, its agents or employees.

Any damages or losses to persons other than the agents or employees of either party hereto or to the property of third persons, paid by either the Vendee or the Vendor, judicially determined to have been caused by the joint negligence of both parties or their agents or employees, shall be borne by the Vendor and Vendee in such proportion as shall be determined by arbitration in the same [fol. 86] manner as is provided in paragraph V. hereof. When any damages or losses to persons other than the agents or employees of either party hereto or to the property of third persons which have been paid by one of the parties with the consent of the other, are alleged by

the party making such payment to have been caused by the joint negligence of both parties, then arbitrators, appointed in the same manner as is provided in paragraph V. hereof, shall determine if such losses were occasioned by the joint negligence of the parties hereto and if so occasioned such losses shall be borne by the Vendor and Vendee in such proportion as the arbitrators shall determine.

XI. The Vendee agrees to use its best endeavors to secure all reasonably profitable consumers of natural gas; to educate the people in the uses and advantages of using natural gas; to introduce appliances adapted for the use of natural gas for heat and power; and the Vendee further agrees that it will make such representations and solicitations as are reasonable and customary to induce a greater consumption of gas. The Vendee further agrees that it will make such extensions or other changes in its mains and distributing system as will be necessary to reasonably accommodate and supply the requirements of the public for gas, but the Vendee shall not be obligated to make such extensions as are not commercially feasible, or where the investment will not be justified by sufficient net earnings.

[fol. 87] XII. It is expressly covenanted and agreed by and between the parties hereto that if either party shall fail to perform any of the covenants or obligations imposed upon it under and by virtue of this contract, then the party offended shall have the right and option to cancel and terminate this contract upon giving the offending party written notice of the violation of such covenant or obligation and such notice having been given, if the violation complained of is not remedied within thirty (30) days, then the termination of this contract shall be deemed complete. The failure of the Vendee to make payments to the Vendor for gas purchased in accordance with the provisions of this contract shall, among other things, be considered a failure to perform a covenant or obligation of this contract and entitle the Vendor to cancel and terminate the contract; cancellation shall be without prejudice, however, to the offended party to collect any amounts then due to it and

without waiver of any other remedy to which it may be entitled for violation of the contract.

XIII. All of the terms, covenants, stipulations and provisions of this contract shall inure to and be binding upon the respective successors and assigns of the parties hereto.

Notices provided to be given hereunder shall be deemed sufficiently given and served when and if deposited in the United States mail, postage prepaid and registered, addressed to the Vendor at Monroe, Louisiana, and to the [fol. 88] Vendee at Natchez, Mississippi.

Witness the execution hereof in duplicate originals on this Seventh day of December, 1927.

Interstate Natural Gas Company, Inc., by Christy Payne, Vice-President. Attest: Jas. Comerford, Ass't Secretary. Central Power & Light Company, by E. B. Neiswanger. Attest: W. D. Boone.

Southern District of Mississippi. Filed Sep. 26, 1930. B. L. Todd, Jr., Clerk, by Louis Eddleman, Deputy.

[fol. 89] Interstate Natural Gas Company, Inc., and Central Power & Light Company

THE STATE OF TEXAS,
County of Bexar:

Before me, the undersigned authority, on this day personally appeared E. B. Neiswanger, Vice-President of Central Power and Light Company, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for and as the act and deed of Central Power and Light Company for the purposes and consideration therein expressed and in the capacity therein stated.

Given under my hand and seal of office this the 10th day of March, A. D. 1927.

J. M. Wilson, Notary Public in and for Bexar County, Texas.

STATE OF NEW YORK,
County of New York:

Before me, the undersigned authority, personally came and appeared Christy Payne, Vice President of the Interstate Natural Gas Company, Inc., personally known to me

to be the person whose genuine signature is affixed to the foregoing instrument and who acknowledged to me and in my presence and in the presence of the undersigned compe-[fol. 90] tent witness that he had signed the above and foregoing instrument of his own free will and accord and for the uses, purposes and considerations therein set forth, and in the capacity therein stated, as the act of the Interstate Natural Gas Company, Inc.

In witness whereof he has hereunto signed his name to these presents, in the presence of me, said Notary, and in the presence of the undersigned competent witness on this the 7th day of December, 1927.

Charles E. Hill.

Witnesses: R. E. Palmer, Helen T. Ekegren.

Southern District of Mississippi. Filed Sep. 26, 1930. B. L. Todd, Jr., Clerk, by Louis Eddleman, Deputy.

[fol. 91] STATE OF LOUISIANA,
Parish of Ouachita:

Before me, the undersigned authority, personally came and appeared A. H. Salisbury, who, being by me first duly sworn, deposes and says:

That he is Assistant Treasurer of Interstate Natural Gas Company, Incorporated, and, in his aforesaid capacity, has custody of a certain gas sale contract between the Interstate Natural Gas Company, Incorporated, and the Town of Natchez, which said contract bears date March 10, 1927; and that the foregoing fourteen pages constitute a true and correct copy of the aforesaid gas sale contract.

A. H. Salisbury.

Sworn to and subscribed before me this 2nd day of September, A. D. 1930. Alden T. Shotwell, Notary Public.

[fol. 92] EXHIBIT "B" TO ANSWER

Interstate Natural Gas Company, Inc., and Town of Woodville

Same as Exhibit "A" in principal features except as to wording "Name of parties and arrangement thereof."

Filed Sept. 26, 1930. B. L. Todd, Jr., Clerk.

[fols. 93 & 94] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER TO ISSUE PRELIMINARY INJUNCTION—Filed Sept. 29, 1930

This cause coming on for hearing on application having been heretofore made and presented to the Honorable Edwin R. Holmes, United States District Judge, for the issuance of a preliminary injunction as prayed for in the bill of complaint in said cause, and the said Honorable Edwin R. Holmes having heretofore called to his assistance the Honorable Rufus E. Foster, United States Circuit Judge, and the Honorable Allen Cox, United States District Judge, to hear and determine the said application, and the said application having been set down for hearing in New Orleans on the 15th day of July, A. D. 1930, and due notice thereof havine been given to the parties in said cause, and by consent and agreement of the parties, said hearing having been continued to be had on the 29th day of September, A.D. 1930, in New Orleans, the said application came on for hearing and determination at the time and ppace stated as [fol. 95] agreed and consented to by the parties, and, after considering the pleadings in the case and the evidence offered on said hearing by the parties to the cause, and having heard arguments of counsel,

It is ordered, adjudged and decreed that a preliminary injunction issue as prayed for in said bill of complaint, on execution of a bond in the sum of $10,000.00 to be approved by the Clerk of this Court.

Rufus E. Foster, United States Circuit Judge. Allen Cox, United States District Judge. E. R. Holmes, United States District Judge.

[File endorsement omitted.]

[fols. 96 & 97] Bond on injunction for $10,000, approved and filed October 14, 1930, omitted in printing.

[fol. 98] IN UNITED STATES DISTRICT COURT

[Title omitted]

WRIT OF INJUNCTION—Filed Oct. 14, 1930

The President of the United States of America to the State Tax Commission of Mississippi, composed of Lester C. Franklin, Homer H. Casteel, and Webb Walley, and to the Attorney-General of Mississippi, George T. Mitchell, Greetings:

Whereas, Interstate Natural Gas Company, Incorporated, Complainant in the above styled cause has filed on the equity side of the District Court of United States for the Southern District of Mississippi, Jackson Division, a bill of complaint against the State Tax Commission of Mississippi, composed of Lester C. Franklin, Homer H. Casteel and Webb Walley, and the Attorney-General of Mississippi, George T. Mitchell, and the said Complainant has obtained an allowance for an injunction as prayed for in said bill of complaint, by the Honorable Edwin R. Holmes, United [fol. 99] States District Judge, the Honorable Rufus E. Foster, United States Circuit Judge and the Honorable Allen Cox, United States District Judge.

Now, therefore, in consideration thereof, and of the particular matters in the said bill of complaint set forth, we do hereby strictly command and enjoin you, the State Tax Commission of Mississippi, composed of Lester C. Franklin, Homer H. Casteel and Webb Walley, and the Attorney-General of Mississippi, George T. Mitchell, and your successors, in office, and attorneys, deputies or assistants, from enforcing or attempting to enforce in any way or manner the Privilege Tax Law of Mississippi of 1930, designated as Chapter 88 of the Laws of 1930 of Mississippi, and further designated as House Bill number 517, or any of the provisions thereof, against complainant, Interstate Natural Gas Company, Incorporated, which commands and injunctions you are respectively required to observe and obey, until our said District Court shall make further order in the premises.

Witness the Honorable Edwin R. Holmes, Judge of the United States District Court of the Southern District of

Mississippi, Jackson Division, this 14 day of October, in the year of our Lord, one thousand nine hundred and thirty.

B. L. Todd, Jr., Clerk.

[File endorsement omitted.]

[fol. 100] In United States District Court

[Title omitted]

Agreement of Counsel re Hearing—Filed Nov. 3, 1930

It is understood and agreed between counsel for both sides that the above styled and numbered cause may be set for final hearing in vacation before E. R. Holmes and Allen Cox, District Judges, and Rufus Foster, Circuit Judge, at a time and place to be agreed upon by the parties.

Witness our hands this the 3rd day of November, 1930.

David C. Bramlette, Counsel for Complainant.

George T. Mitchell, Atty-Genl., by E. R. Holmes, Spe. Agt., Counsel for Defendants.

[File endorsement omitted.]

[fol. 101 In United States District Court

[Title omitted]

Order Setting Cause—Filed Nov. 3, 1930

It having been agreed upon by counsel for both sides that the above styled and numbered cause may be heard in vacation before E. R. Holmes and Allen Cox, District Judges, and Rufus Foster, Circuit Judge, at a time and place to be agreed upon by the parties hereto, it is hereby ordered that this cause be set for hearing before the Judges hereinabove named in vacation at a time and place to be agreed upon by both parties, and agreeable to the convenience of the Court.

Ordered this the 3rd day of November, 1930.

E. R. Holmes, District Judge.

[fol. 102] IN UNITED STATES DISTRICT COURT

[Title omitted]

AGREED STATEMENT OF FACTS—Filed Jan. 2, 1931

Complainant and defendants through and by their respective counsel agree that the following shall be the facts in this case on the final hearing on the merits for a perpetual injunction.

1

All of the facts alleged in the bill of complaint which are admitted in the answer of defendants shall be considered as facts in this case.

2

The Privilege Ta- Law of 1930 of the State of Mississippi attached to the Bill of complaint as Exhibit "A" and the contract between the complainant and the Town of Wood-
[fol. 103] ville, and the Complainant and the Central Power and Light Company, attached to the defendant's answer as Exhibits "A" and "B" respectively thereto, shall be considered as part of the facts of this case. The said contract between complainant and the Central Power and Light Company of Natchez, Mississippi has been assigned and is now legally owned and title vested in the Mississippi Power and Light Company.

3

The Town of Woodville and the Mississippi Power and Light Company distribute natural gas at retail to consumers in Woodville, Mississippi, and Natchez, Mississippi, respectively.

4

Complainant is a corporation incorporated under and by virtue of the laws of the State of Delaware and domiciled therein at Wilmington, having a main office in New York City, New York, and an office at Monroe, State of Louisiana, and is the owner of a large acreage of proven mineral lands in the area known as the Monroe Gas Field in the State of Louisiana, and from these and other lands

in the Monroe Gas Field in the State of Louisiana, complainant owns and is constantly acquiring gas. In finding a market for said natural gas, complainant has constructed, owns and operates for the transportation or transmission of said natural gas to distributors a trunk line, or lines, extending from the northern part of the State of Louisiana in a southeasternly direction through the State of Missis- [fol. 104] sippi, and again into the State of Louisiana.

Approximately 70,000,000 cubic feet of natural gas are sold daily to distributors in said State of Louisiana during the summer period, and 75,000,000 cubic feet daily during the winter months. Approximately 204,000 cubic feet of natural gas are sold from said trunk line to the two aforesaid distributors in Mississippi daily during the summer months and approximately 520,000 cubic feet daily during the winter months, the greater part of this gas being sold at a maximum price of 35¢ per thousand cubic feet, the balance at 20¢ per thousand cubic feet. Approximately $46,754.00 annually is derived from the sale of said gas at said prices in the State of Mississippi. The gas sold in Mississippi is less than 1% of the gas flowing through Mississippi and sold in Louisiana.

5

The two contracts above mentioned were executed in New York City, New York. Payments for natural gas purchased by the distributors Mississippi Power and Light Company at Natchez and Town of Woodville, at Woodville are made at the office of the Interstate Natural Gas Company, in Monroe, Louisiana. The Central Power and Light Company constructed a pipe line as a part of its distributing system in Natchez, Mississippi from the City of Natchez to the trunk pipe line of complainant, gas being conveyed from said trunk pipe line of complainant on a wholesale basis into said pipe line now owned by Mississippi [fol 105] Power and Light Company, said natural gas flows continuously from said trunk pipe line, or lines, of complainant from the point of delivery at Natchez, where the pipe line of the complainant is tapped and where a meter furnished and provided by complainant measures the amount of gas purchased by said distributor at Natchez. Said meter or measuring station is, by virtue of the above

mentioned contract, the exclusive method of measuring all gas delivered and sold under said contract, and said point where said trunk pipe line of complainant is tapped three or four miles from the Town of Natchez and in the State of Mississippi is by virtue of the terms of the aforesaid contract the point of delivery of all gas marketed under the terms of said contract. All of said transportation or transmission of natural gas is a continuous and without interruption.

Neither the complainant nor the said distributors store any of said gas for any time or in any quantity in the State of Mississippi. The same conditions exist with respect to the transportation, transmission, sale, delivery, measurement of, and payment for natural gas purchased by the Town of Woodville from the complainant. The Town of Woodville owns its own pipe line which connects its distributing system with the trunk line of complainant and the point of delivery and the meter or measuring station where the gas sold the Town of Woodville by complainant is delivered and measured respectively are both three or four miles from the Town of Woodville and in the State [fol. 106] of Mississippi.

6

In the State of Mississippi, as a part of the said trunk line of complainant, extending from Louisiana through Mississippi and again into Louisiana, complainant has 72.42 miles of pipe having a diameter of 22 inches, 8.11 miles of pipe having a diameter of 12 inches, and 4.99 miles of pipe having a diameter of 10 inches, all located in Wilkinson and Adams County, Mississippi, of the total value in Mississippi in excess of two million dollars ($2,000,000); that in Louisiana the total value of complainant's pipe line or lines exceeds fifteen million dollars ($15,000,000); that if complainant is liable to pay a privilege tax for operating said pipe line, under the terms and provisions of section 163, chapter 88, of the Privilege Tax Law of Mississippi of 1930, the amount owed to the State of Mississippi by said Interstate Natural Gas Company, Incorporated by virtue of said law will be $3,873.65 for the year 1930.

Unless enjoined defendants will collect said privilege tax from complainant and otherwise enforce the said Privilege Tax Law of 1930 of Mississippi against complainant.

There is no way to determine and neither complainant nor the said distributors at Natchez and Woodville know in advance how much gas will pass through said points of delivery near Natchez and Woodville respectively, where [fol. 107] said trunk pipe line of complainant is tapped and will pass through said meters or measuring stations near Natchez and Woodville respectively at said points of delivery and in the State of Mississippi at any particular time or on any particular day or days, or in any certain month or number of months; and the amount of gas sold by complainant to said distributors can only be determined after it has passed through said meters or measuring stations near Natchez and Woodville respectively and in the State of Mississippi by an examination and reading of said meters.

Witness the signatures of the respective counsel for the parties hereto, this the 19th day of December, A. D., 1930.

David C. Bramlette, Counsel for Complainant. Geo. T. Mitchell, Atty. General, by E. R. Holmes, Jr., Spec. Atty., Counsel for Defendants.

[File endorsement omitted.]

[fol. 108] In United States District Court, Southern District of Mississippi, Jackson Division, in Vacation, A. D. 1931

In Equity. No. 326

Interstate Natural Gas Company, Incorporated, Complainant,

vs.

State Tax Commission of Mississippi et als., Defendants

Decree—Filed Feb. 20, 1931

This cause came on for final hearing on the bill of complaint, praying for a decree enjoining and restraining Defendants from enforcing against Complainant, Chapter

88 of the Laws of 1930 of the State of Mississippi, designated therein as the Privilege Tax Law of Mississippi of 1930, and on answer on behalf of Defendants and an agreed statement of the facts by the parties hereto and filed in this cause, and the Honorable Edwin R. Holmes having heretofore called to his assistance the Honorable Rufus E. Foster, United States Circuit Judge, and the Hon. Wayne G. Borah, United States District Judge, pursuant to Section 266 of the Judicial Code, to hear and determine this cause, and the said final hearing by consent and agreement of the parties having been set for February 20, 1931, in New Orleans, in vacation, and, after considering the pleadings in this cause and the evidence and having heard arguments of counsel for both Complainant and the Defendants, the Court finds that the facts are set forth in the said agreed statement filed herein, of which the essential facts as a basis of this decision, are [fol. 109] that Complainant, a corporation incorporated under and by virtue of the Laws of the State of Delaware and domiciled therein at Wilmington, owns and operates for the transportation or transmission of natural gas owned and acquired by Complainant in the State of Louisiana, to distributors, a trunk pipe line, or lines, extending from the Northern part of the State of Louisiana through the State of Mississippi, and again into the State of Louisiana; that less than one per cent of the gas flowing through the said pipe line is sold to distributors in Mississippi where complainant does not sell any natural gas at retail; that the sale of natural gas in Mississippi was provided for in two contracts executed at a main office of Complainant in New York City, prior to the delivery of said natural gas in said trunk pipe line or lines, and payments for said natural gas are made at the office of Complainant in Monroe, Louisiana; that said natural gas flows continuously from Louisiana in said trunk pipe line or lines, to the points of delivery in Mississippi, where the pipe line of Complainant is tapped by lines of two distributors, and meters are furnished and provided by Complainant to measure the amount of gas purchased by the two distributors in Mississippi; that all transportation or transmission of natural gas into and through Mississippi, is continuous and without interruption and neither the Complainant nor said distributors store any of said

natural gas for any time or in any quantity in the State of [fol. 110] Mississippi; that the conclusions of the Court are that Complainant, Interstate Natural Gas Company Incorporated, is engaged wholly and exclusively in interstate commerce in the State of Mississippi and that Chapter 88 of the Laws of 1930 of the State of Mississippi, designated as a Privilege Tax Law of 1930 of Mississippi attempting to levy a Privilege Tax on the said pipe line of Complainant in Mississippi, which Defendants will collect from Complainant unless permanently enjoined and otherwise enforced said law against Complainant, contravenes and is in violation of Article *of Article* 1, Section VIII, Clause 3, of the Constitution of the United States and is therefore invalid and void, as affecting Complainant, Intgstate Natural Gas Company, Incorporated, because the said Privilege Tax Law in this case unduly burdens interstate commerce and constitutes an unreasonable interference therewith.

It is therefore, ordered, adjudged and decreed that the preliminary injunction heretofore granted in this cause by this Court on September 27, A. D. 1930, be and the same is hereby made *a* permanent and perpetual and that the Defendants, the State Tax Commission of Mississippi, composed of Lester C. Franklin, Homer H. Casteel and Webb Walley, and the Attorney-General of Mississippi, George T. Mitchell, their successors in office, and attorneys, deputies or assistants, are permanently and perpetually enjoined, from enforcing or attempting to enforce in any way or manner the Privilege Tax Law of Mississippi [fol. 111] of 1930, being Chapter 88 of the Laws of 1930 of Mississippi, or any of the provisions thereof, against Complainant, Interstate Natural Gas Company, Incorporated, and from collecting or attempting to collect said Privilege Tax from Complainant and from otherwise enforcing any of the provisions of said law against Complainant, Interstate Natural Gas Company, Incorporated.

Ordered, adjudged and decreed this 20th day of February, A. D. 1931.

Rufus E. Foster, United States Circuit Judge. E. R. Holmes, United States District Judge. Wayne G. Borah, United States District Judge.

[File endorsement omitted.]

[fol. 112] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL—Filed Mar. 2, 1931

To the Honorable Rufus E. Foster, Circuit Judge; Wayne G. Borah, and Edwin R. Holmes, District Judges, composing said Court:

Now come the State Tax Commission of the State of Mississippi, composed of Lester C. Franklin, Chairman, Homer H. Casteel and Webb Walley, and George T. Mitchell, Attorney General of the State of Mississippi, defendants in the above styled and numbered cause, and conceiving themselves aggrieved by the order made and entered by the above named Court in the above entitled cause, on the 20th day of February, 1931, wherein among other things, said Court, composed of Judge Rufus E. Foster, Circuit Judge, Judge Wayne G. Borah and Judge Edwin R. Holmes, District Judges, under Section 266 of the United States Judicial Code, and Section 380, Title 28, United States Code, granted the complainant's application for a permanent injunction in said cause, do hereby appeal to the Supreme Court of the United States from said final [fol. 113] order and decree, and especially that portion of it granting the complainant's application for a permanent injunction, all of which reasons are set forth in the assignment of errors which is filed herewith.

Defendants further show unto the Court that the above entitled cause is a suit against the State of Mississippi and its officers, agents and employees, and that, therefore, under the law, no bond is required for an appeal by the State from said final order and decree. In view of the fact that defendants will sustain irreparable harm and damage by reason of said Court granting complainant's application for said permanent injunction in said cause, these defendants pray that this their petition for appeal may be allowed.

Defendants further pray that a transcript of record proceedings and papers upon which said order was made, duly authenticated, may be sent to the Supreme Court of the United States, at Washington, D. C.

Dated this the 28th day of February, A. D. 1931.

Geo. T. Mitchell, Attorney General, by E. R. Holmes, Jr., Special Agent, Attorney for Defendants.

[File endorsement omitted.]

[fol. 114] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ALLOWING APPEAL

This day this cause came on to be heard on the application of the defendants in the above entitled cause for an appeal to the Supreme Court of the United States from the final decree rendered in this cause, by three Judges, granting the complainant's application for a permanent injunction on the 20th day of February, 1931.

It is ordered, adjudged and decreed that said appeal be and is hereby allowed, and, it appearing to the Court that this suit is a suit against the State of Mississippi, it is ordered, adjudged and decreed that pending the appeal from the said decree in said cause to the Supreme Court of the United States, an appeal bond shall not be, and is not hereby required.

Ordered, adjudged and decreed this the 28th day of February, 1931.

Rufus E. Foster, Circuit Judge. E. R. Holmes, Wayne G. Borah, District Judges.

[fol. 115] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS—Filed Mar. 2, 1931

Now come defendants, State Tax Commission of the State of Mississippi, composed of Lester C. Franklin, Chairman, Homer H. Casteel and Webb Walley, and Geo. T. Mitchell, Attorney General of the State of Mississippi, and file the following assignment of errors, upon which they will rely on their appeal from the decree made by this Court on the 20th day of February, 1931, in the above entitled cause:

(1) The Court erred in granting the complainant's application for a permanent injunction.

(2) The Court erred in concluding from the facts, as set forth in the agreed statement of fact, filed in this cause, that the complainant is engaged wholly and exclusively in interstate commerce in the State of Mississippi.

[fol. 116] (3) The Court erred in not dissolving, at said final hearing on February 20th, 1931, the temporary injunction theretofore granted complainant on a preliminary hearing of said cause.

(4) The Court erred in holding that the complainant was entitled to the permanent injunction applied for.

(5) And other causes to be shown at the hearing.

Geo. T. Mitchell, Attorney General, by E. R. Holmes, Jr., Special Agent, Attorney for Defendants.

[File endorsement omitted.]

[fol. 117] IN UNITED STATES DISTRICT COURT

[Title omitted]

WAIVER OF ISSUANCE AND SERVICE OF CITATION

Now comes the Complainant, Interstate Natural Gas Company, Incorporated, by its Attorney of Record, and waives the issuance and service upon it of a citation of appeal and accepts notice of the filing in the above entitled cause of a petition for appeal, an assignment of errors and an order allowing said appeal, and hereby enters its appearance in the Supreme Court of the United States in the above entitled cause, the same as if duly and legally served with a citation as required by law.

This the 2nd day of March, A. D. 1931.

Interstate Natural Gas Company, Inc., by David Clay Bramlette, Attorney of Record.

[fol. 118] IN UNITED STATES DISTRICT COURT

[Title omitted]

PRAECIPE FOR TRANSCRIPT OF RECORD

(1) Original bill of complaint with exhibits thereto.

(2) Decree of the District Judge granting temporary restraining order.

(3) Temporary restraining order with returns thereupon.

(4) Motion of plaintiff for temporary injunction.

(5) All affidavits in support of plaintiff's bill.

(6) Answer of defendants to plaintiff's original bill of complaint.

(7) Agreed statement of fact for purposes of hearing on motion for temporary injunction.

(8) Decree of Court granting temporary injunction.

(9) Agreement of counsel for final hearing of the cause in vacation.

[fol. 119] (10) Agreed statement of fact for purposes of final hearing.

(11) Decree of Court granting permanent injunction.

(12) Petition for an appeal by defendants.

(13) Assignments of error.

(14) Order of Honorable Rufus E. Foster, Circuit Judge, Honorable E. R. Holmes and Honorable Wayne G. Borah, District Judges, granting the appeal.

(15) Each and every order or decree of the Court entered in said cause, and each paper filed in said cause not hereinbefore specifically set out.

Geo. T. Mitchell, Attorney General, by E. R. Holmes, Jr., Special Agent, Attorney for Defendants.

STATE OF MISSISSIPPI,
County of Wilkinson:

I, D. C. Bramlette, counsel for plaintiff in the above styled cause, hereby accept service of the above and foregoing præcipe for transcript of record, and agree that the same is correct and that the transcript of the record should be made in accordance therewith.

David Clay Bramlette, Attorney for Plaintiff.

[fol. 120] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 121] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF PARTS OF THE RECORD TO BE PRINTED—Filed April 13, 1931

Come now the appellants in the above styled cause and state that the points upon which they intend to rely in this Court in this case are as follows:

1. The United States District Court for the Southern District, Jackson Division, State of Mississippi, composed of Edwin R. Holmes and Wayne G. Borah, District Judges and Rufus E. Foster, Circuit Judge, erred in granting the complainant's application for a permanent injunction.

2. The United States District Court for the Southern District, Jackson Division, State of Mississippi, composed of Edwin R. Holmes and Wayne G. Borah, District Judges and Rufus E. Foster, Circuit Judge, erred in concluding from the facts, as set forth in the agreed statement of fact, filed in this cause, that the complainant is engaged wholly and exclusively in interstate commerce in the State of Mississippi.

[fol. 122] 3. The United States District Court for the Southern District, Jackson Division, State of Mississippi, composed of Edwin R. Holmes and Wayne G. Borah, District Judges and Rufus E. Foster, Circuit Judge, erred in not dissolving, at said final hearing on February 20th, 1931, the temporary injunction theretofore granted complainant on a preliminary hearing of said cause.

4. The United States District Court for the Southern District, Jackson Division, State of Mississippi, composed of Edwin R. Holmes and Wayne G. Borah, District Judges, and Rufus E. Foster, Circuit Judge, erred in holding that the complainant was entitled to the permanent injunction applied for.

And the Appellants further state that the following parts of the record as filed in this Court need be printed by the Clerk for hearing of the case:

1. Original bill of complaint with exhibits thereto.
2. Decree of the District Judge granting temporary restraining order.
3. Temporary restraining order with returns thereupon.
4. Motion of plaintiff for temporary injunction.
5. All affidavits in support of plaintiff's bill.
6. Answer of defendants to plaintiff's original bill of complaint.
7. Agreed statement of fact for purposes of hearing on motion for temporary injunction.

8. Decree of Court granting temporary injunction.

9. Agreement of counsel for final hearing of the cause in vacation.

10. Agreed statement of fact for purposes of final hearing.

11. Decree of Court granting permanent injunction.

[fols. 123-127] 12. Petition for an appeal by defendants.

13. Assignments of error.

14. Order of Honorable Rufus E. Foster, Circuit Judge, Honorable E. R. Holmes and Honorable Wayne G. Borah, District Judges, granting the appeal.

15. Each and every order or decree of the Court entered in said cause, and each paper filed in said cause not hereinbefore specifically set out.

Geo. T. Mitchell, Attorney General, by J. A. Lauderdale, Asst. Atty. Gen'l, Attorney for Appellants.
E. R. Holmes, Jr., Special Agent.

STATE OF MISSISSIPPI,
County of Wilkinson:

I, D. C. Bramlette, counsel for plaintiff in the above styled cause, hereby accept service of the above and foregoing statement and designation and agree that the same is correct and that the record should be printed in accordance therewith.

David Clay Bramlette, Attorney for Appellee.

[fol. 128] [File endorsement omitted.]

Endorsed on cover: File No. 35,755. S. Mississippi D. C. U. S. Term No. 40. State Tax Commission of Mississippi et al., etc., appellants, vs. Interstate Natural Gas Company, Incorporated. Filed March 30, 1931. File No. 35,755.

FILE COPY

APR 28 19

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1930

NO. [redacted] 40

STATE TAX COMMISSION OF THE STATE OF MISSISSIPPI COMPOSED OF LESTER C. FRANKLIN, CHAIRMAN, HOMER H. CASTEEL AND WEBB WALLEY,

GEO. T. MITCHELL, ATTORNEY GENERAL OF THE STATE OF MISSISSIPPI,

Appellants,

VS.

INTERSTATE NATURAL GAS COMPANY, INCORPORATED,

Appellee.

APPELLANTS' STATEMENT AS TO JURISDICTION ON APPEAL.

GEO. T. MITCHELL,
Attorney General

J. A. LAUDERDALE,
Assistant Attorney General.

E. R. HOLMES, Jr., of Counsel
Special Agent.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1930

NO. 833

STATE TAX COMMISSION OF THE STATE OF MISSISSIPPI COMPOSED OF LESTER C. FRANKLIN, CHAIRMAN, HOMER H. CASTEEL AND WEBB WALLEY,

GEO. T. MITCHELL, ATTORNEY GENERAL OF THE STATE OF MISSISSIPPI,

Appellants,

VS.

INTERSTATE NATURAL GAS COMPANY, INCORPORATED,

Appellee.

STATEMENT AS TO JURISDICTION ON APPEAL.

MAY IT PLEASE THE COURT:

The appellants in support of the jurisdiction of this Court to review the above styled cause on appeal, respectfully present:

A

STATUTORY PROVISION SUSTAINING JURISDICTION.

The Act of February 13, 1925, Chapter 229, Section 1, 43 Stat. 936, 938, provides that Sections 238 and 266 of the Judicial Code are amended to read as follows:

"Sec. 238. A direct review by the Supreme Court of an interlocutory or final judgment or

decree of a district court may be had where it is so provided in the following sections and not otherwise."

"Sec. 266. No interlocutory injunction suspending or restraining the enforcement, operation or execution of any statute of a State by restraining the action of any officer of such State in the enforcement or execution of such statute, or in the enforcement or execution of an order made by an administrative board or commission acting under and pursuant to the statutes of such State, shall be issued or granted by any justice of the Supreme Court, or by any district court of the United States, or by any judge thereof, or by any circuit judge acting as district judge, upon the ground of the unconstitutionality of such statute, unless the aplication for the same shall be presented to a justice of the Supreme Court of the United States, or to a circuit or district judge, and shall be heard and determined by three judges, of whom at least one shall be a justice of the Supreme Court or a circuit judge, and the other two may be either circuit or district judges, and unless a majority of said three judges shall concur in granting such application. Whenever such application as aforesaid is presented to a justice of the Supreme Court, or to a judge, he shall immediately call to his assistance to hear and determine the application two other judges: Provided, however, that one of such three judges shall be a justice of the Supreme Court, or a circuit judge. Said application shall not be heard or determined before at least five days' notice of the hearing has been given to the governor and to the attorney general of the State, and to such other persons as may be defendants in the

suit: Provided, that if of opinion that irreparable loss or damage would result to the complainant unless a temporary restraining order is granted, any justice of the Supreme Court or any circuit or district judge, may grant such temporary restraining order at any time before such hearing and determination of the application for an interlocutory injunction, but such temporary restraining order shall remain in force only until the hearing and determination of the application for an interlocutory injunction upon notice as aforesaid. The hearing upon such application for an interlocutory injunction shall be given precedence and shall be in every way expedited and be assigned for a hearing at the earliest practicable day after the expiration of the notice hereinbefore provided for. An appeal may be taken direct to the Supreme Court of the United States from the order granting or denying, after notice and hearing, an interlocutory injunction in such case. It is further provided that if before the final hearing of such application a suit shall have been brought in a court of the State having jurisdiction thereof under the laws of such State, to enforce such statute or order, accompanied by a stay in such State court, all proceedings in any court of the United States to restrain the execution of such statute or order shall be stayed pending the final determination of such suit in the courts of the State. Such stay may be vacated upon proof made after hearing, and notice of ten days served upon the attorney general of the State, that the suit in the State Courts is not being prosecuted with diligence and good faith. The requirement respecting the presence of three judges shall also apply to the final hearing in such suit in the dis-

trict court; and a direct appeal to the Supreme Court may be taken from a final decree granting or denying a permanent injunction in such suit."

B

DATE OF DECREE AND DATE OF APPLICATION FOR APPEAL

The decree sought to be reviewed was entered on the 20th day of February, 1931.

The application for appeal was presented on the 28th day of February, 1931.

C

NATURE OF CASE AND RULING BELOW.

This is an appeal from a final decree of the United States District Court, Southern District of Mississippi, three judges sitting in the cause wherein the appellee filed a bill of complaint against the appellants to enjoin the enforcement of Chapter 88, Laws of 1930, and more especially Section 163 of said act. Said section requires persons engaged in the business of operating a pipe line in Mississippi to pay a privilege tax, said tax to be measured by the size and number of miles of pipe owned and operated by the tax payer within the State of Mississippi. Said act authorizes the State Tax Commission to enforce the provisions thereof.

It is alleged in said bill that the appellee is a corporation organized and existing under and by virtue of the laws of the State of Delaware; that it operates a pipe line

originating in Louisiana, running into and through Mississippi; that it sells natural gas in wholesale quantities to two distributors in Mississippi; that all of it operations in and through Mississippi are in interstate commerce, and that the amount in controversy exceeds the sum of $3,000, exclusive of interest and cost.

The basis for the relief prayed for is the claim that the above act of the Legislature of the State of Mississippi is unconstitutional and void because:

First: Said act violates the provisions of Article 1, Section 8, Clause 3 of the Constitution of the United States in that it attempts to impose a license, place a burden, interfere with, obstruct and/or regulate interstate commerce.

Second: Said act is an attempted usurpation of the powers delegated to the Congress of the United States by the Constitution of the United States.

After hearing said cause the said Court, composed of Honorable Rufus E. Foster, Circuit Judge, Honorable Edwin R. Holmes and Honorable Wayne G. Borah, District Judges, held that said act as applied to appellee violated the section of the Constitution of the United States hereinbefore named, as appellee was engaged solely in interstate commerce in the State of Mississippi, and enjoined the appellants from enforcing said act.

D

CASES BELIEVED TO SUSTAIN JURISDICTION.

The following decisions of this Court are believed to sustain jurisdiction of this appeal:

Moore v. Fidelity & Deposit Co., 272 U. S. 317, 320-321; *Smith v. Wilson*, 273 U. S. 388; *Ex Parte Butler*, 271 U. S. 461, 465; *State Board of Tax Commissioners vs. Jackson*, No. 183, October Term 1930.

We respectfully submit that this Court has jurisdiction of the appeal by virtue of Sections 238 and 266 of the Judicial Code, as amended by the Act of February 13, 1925.

Respectfully submitted,

GEO. T. MITCHELL,
Attorney General

J. A. LAUDERDALE,
Assistant Attorney General

E. R. HOLMES, Jr., of Counsel
Special Agent.

FILE COPY

Office Supreme Court, U.
FILED
SEP 14 1931
CHARLES ELMORE CROPL
CLERK

(35755)

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1931

NO. 40.

STATE TAX COMMISSION OF MISSISSIPPI, et al, etc., Appellants,

VS.

INTERSTATE NATURAL GAS COMPANY, Inc., Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

BRIEF FOR APPELLANTS

GEO. T. MITCHELL, Attorney General,
J. A. LAUDERDALE, Assistant Attorney General,
Attorneys for Appellants

EDWIN R. HOLMES, Jr., Special Agent,
Of Counsel.

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(35755)

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1931

NO. 40.

STATE TAX COMMISSION OF MISSISSIPPI, et al, etc., Appellants,

VS.

INTERSTATE NATURAL GAS COMPANY, Inc., Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

BRIEF FOR APPELLANTS.

I.

PRELIMINARY STATEMENT

The Interstate Natural Gas Company filed its Bill of Complaint in equity in the United States District Court for the Southern District of Mississippi asking injunctive

relief against the State Tax Commission and the Attorney General of the State of Mississippi and all successors, employees, or agents of said officials to restrict them from collecting a privilege tax imposed upon appellee by virtue of Section 163 of the Privilege Tax Laws of Mississippi of 1930. This suit involved the constitutionality of a state statute, and hence came within the provisions of Section 380, United States Code, Annotated and was tried before a court composed of District Judges Edwin R. Holmes and Wayne G. Borah and Circuit Judge Rufus E. Foster. A hearing was had before this court on bill, answer and agreed statement of facts on September 29, 1930, at which time the court granted to appellee a preliminary injunction.

Subsequently on February 20, 1931, a final hearing was had in this cause before a court composed of the above named judges. After the hearing upon bill, answer, agreed statement of fact and arguments of counsel, the court entered a decree making permanent and perpetual the preliminary injunction granted on September 27, 1930, and permanently and perpetually enjoining appellants from collecting, or attempting to collect, from appellee the privilege tax imposed by virtue of Section 163 above mentioned.

Said decree of February 20, 1931 was based upon the conclusion of the court that the appellee, Interstate Natural Gas Company, Inc., was and is engaged wholly and exclusively in interstate commerce in the State of Mississippi, and that, therefore, Chapter 88 of the Laws of 1930 of the State of Mississippi attempting to levy a privilege tax on the pipe line of appellee in Mississippi was in violation of

Article 1, Section 8, Clause 3 of the Constitution of the United States, and, therefore, invalid and void as affecting apellee, because said privilege tax law in this case unduly burdens interstate commerce and constitutes an unreasonable interference therewith.

From this final decree the appellants perfected an appeal to this court under Section 266 of the United States Judicial Code and Section 380, Title 28, United States Code, Annotated.

II.

QUESTIONS INVOLVED.

It will be observed from the preliminary statement of this case that the lower court in its final decree decided:

(1) That the appellee was engaged wholly and exclusively in interstate commerce in the State of Mississippi, and,

(2) That Section 163, Chapter 88, of the Privilege Tax Laws of Mississippi of 1930 was unconstitutional and void *as affecting appellee.*

It, therefore, follows that the sole question involved on this appeal is whether or not appellee is engaged wholly and exclusively in interstate commerce in Mississippi, or is engaged in both intrastate commerce in Mississippi and interstate commerce, and this question can only be resolved by applying the law to the facts as set out in the agreed statement of facts upon which this case was tried.

III.

ANALYSIS OF FACTS

The agreed statement of facts (Rec. p. 55) show that the appellee is a Delaware corporation and is the owner of a large acreage of proven mineral lands in the area known as the Monroe Gas Fields in the State of Louisiana, and that appellee has constructed, owns and operates a pipe line or lines extending from said field in a southeasterly direction through the State of Mississippi and again into the State of Louisiana. In the State of Mississippi complainant has 72.42 miles of pipe having a diameter of 22 inches; 8.11 miles having a diameter of 12 inches; and 4.99 miles of pipe having a diameter of 10 inches, all located in Wilkinson and Adams Counties, Mississippi, of the total value in Mississippi in excess of $2,000,000.00.

This line of pipe in Mississippi is a link in the line of pipe of complainant extending from Louisiana through Mississippi and again into Louisiana. Under the terms and provisions of Section 163, Chapter 88, of the Privilege Tax Law of Mississippi, 1930, the appellee is liable to the state of Mississippi for a privilege tax for the year 1930 in the sum of $3,873.65. (Tr. of Record pp. 17-57).

The facts further show that appellee sells its natural gas so transported to several distributors in the State of Louisiana, to a distributor at Natchez in the State of Mississippi, namely, the Mississippi Power and Light Company, and to a distributor at Woodville in the State of Mississippi, namely, the Town of Woodville. (Tr. of Record pp. 56-57).

The agreed statement of facts further shows that the privilege tax law of 1930 of the State of Mississippi and the contract between appellee and the Town of Woodville and appellee and the Central Power and Light Company are to be considered as part of the facts of this case. The said contract between appellee and the Central Power and Light Company of Natchez, Mississippi was assigned and is now owned by the Mississippi Power and Light Company. (Tr. of Record p. 55).

Section 163 of the privilege tax laws of Mississippi, 1930, reads in part as follows:

> "Section 163. Pipe Line Company.—Upon each person engaged and/or continuing in this state in the business of operating a pipe line or transporting in or through this state oil or natural or artificial gas through pipes and/or conduits a tax as follows:
>
> On each mile of pipe having a diameter of 20 inches or more.....$50.00
> On each mile of pipe having a diameter 15 inches or less than 20 inches.....$35.00
> etc."

Section 244 of said laws is as follows:

> "Section 244. That if for any reason any section, paragraph, provision, clause, or part of this chapter shall be held unconstitutional or invalid that fact shall not affect or destroy any other section, paragraph, clause, or part of this chapter not in and of itself invalid, but the remaining portion hereof shall be in force without regard to that so invalidated." (Tr. of Rec. 26.)

The two contracts above mentioned between the appellee and the Town of Woodville and the appellee and the Central Power and Light Company are the same in their principal features except as to wording, name of parties and arrangement thereof. I will, therefore, analyze them together. (Tr. of Rec. p. 51.)

The facts show that these two contracts were executed in New York City, New York, and that payments for natural gas purchased by the two distributors at Woodville and Natchez respectively are made at the office of the appellee company in Monroe, Louisiana. The appellee calls these two contracts "prior orders" for the purchase and delivery of natural gas. In other words, the appellee's contention is that the distributors at Natchez and Woodville by virtue of these two contracts order gas from appellee's gas field at Monroe, Louisiana before it is sent from the State of Louisiana.

An analysis of the contracts shows the following:

First, the contracts used the words "to sell" and "to purchase." The contracts, therefore, are executory contracts of sale. (Tr. of Rec. p. 40).

Second, the contracts show that the distributor must construct and install a pipe line from the city of Monroe to a tap outside the city limits in appellee's 22 inch pipe line located in Mississippi. The facts show that both distributors have constructed such pipe lines from the Towns of Woodville and Natchez respectively in order to tap appellee's 22 inch pipe line, and that both the distributors and

appellee have constructed and installed all taps, regulators, meters, etc., as required in said contracts. (Tr. of Rec. pp. 40-41).

Third, according to the contract the appellee agreed to deliver gas to the distributors at or about a pressure of 50 pounds per square inch and agreed to install and maintain at the point of delivery the necessary regulators to accomplish delivery at or about said pressure. (Tr. of Rec. p. 41).

Fourth, the appellee agreed to install a recording thermometer at said point of delivery to test the flowing temperature of the gas. (Tr. of Rec. p. 41).

Fifth, appellee agreed to erect and maintain at its own expense at the delivery point hereinbefore mentioned a measuring station properly equipped with a Westcott orifice meter, which meter was deemed by the terms of the contract the exclusive method of measuring all gas delivered and sold under this contract. On the request of the distributor, it became appellee's duty to test all meters in service at said measuring station at its own expense. It will be noted that the taps, regulators, recording thermometers, and meters were all by the terms of the contract to be installed, owned and operated by appellee at the points of delivery of natural gas to said distributors, which points of delivery as designated in the contract are in the State of Mississippi. (Tr. of Rec. p. 42.)

Sixth, the contract further shows that the prices to be paid by the distributor to the appellee for the gas pur-

chased are determined by the type of consumer to whom the gas is sold, the prices being fixed as follows: 35c per M for gas sold to domestic and commercial consumers; 20c per M for gas sold to industrial consumers. The contract then defines domestic, commercial and industrial consumers. It will be seen, therefore, that the price to be paid for the gas purchased is not and cannot be ascertained until actually delivered to the distributor in the State of Mississippi and consumed by one of the distributor's customers. (Tr. of Rec. p. 44).

Seventh, the contract shows that appellee has the right at all reasonable times to go upon the property of the distributor and to make such inspection and investigation of same as it desires, including the right to inspect distributor's books, accounts, meters and records for the purpose of informing itself as to the sales of gas and the condition of vendee's plant and system, etc. (Tr. of Rec. p. 46).

Eighth, the contract further shows that the obligations of the appellee under it are at all times subject to any obligations and prior contracts having legal preference, and that nothing in the contract in any way abridges the right of the appellee at any time to sell, transport and deliver gas to others, or to restrict or reserve its properties, or any part of them, for the exclusive benefit of said contract. (Tr. of Rec. p. 47).

The agreed statement of facts shows that these contracts between the appellee herein and the town of Woodville and the Mississippi Power and Light Company, respectively, are now in full force and effect. Both the ven-

dor and the vendee in each instance has complied and is complying with the terms of the contract. It can, therefore, be readily seen that the appellee in this case is doing the following things in the State of Mississippi, viz: The appellee is transporting from its gas fields in Monroe, Louisiana through its huge interstate trunk lines natural gas. At two points in Mississippi where appellee's interstate line is tapped, the appellee owns a regulator, a recording thermometer and a measuring station equipped with orifice meter. At both points the taps, regulators, thermometers and meters are owned and operated by appellee, and at those points appellee, by means of these instruments, reduces the pressure of the gas to approximately fifty pounds per square inch, records its temperature, measures the amount of gas which has passed through the tap, and then delivers the gas to the distributors at Woodville and Natchez, respectively. It would seem that appellee's control over the gas ceases there. However, as shown by the contract, its interest in the gas does not cease there, as the contracts provide that the price to be paid for the gas by the distributor is determined by the type of consumer to whom the gas is sold by such distributor. Furthermore, the appellee may inspect distributor's books, accounts, meters, lines and records at any reasonable time. It will be further seen that appellee cannot determine what gas or how much gas it will treat, prepare, sell and deliver to the respective distributors until such gas has actually reached appellee's taps located in the State of Mississippi. (Tr. of Rec. p. 58).

IV.

BRIEF AND ARGUMENT

A.

ARGUMENT ON REASON AND PRINCIPLE

As said at the outset, the final decision of the instant case hinges upon the question whether the appellee, the Interstate Natural Gas Company, is engaged in an intrastate business in the State of Mississippi. There is no doubt but that appellee is engaged in interstate commerce and is carrying on an interstate business when it transports natural gas through trunk lines from its Monroe gas fields through the State of Mississippi for ultimate sale and delivery to distributors at Baton Rouge and New Orleans, Louisiana. The question, therefore, is whether the appellee in addition to carrying on its interstate business, is engaged in an intrastate business conducted in the State of Mississippi by virtue of its sales of gas to distributors at Natchez and Woodville, respectively.

Before a discussion of this question, however, it is necessary to dispose of the two questions:

1. Is a state privilege or occupation tax valid when computed by the mileage method, such tax being a tax solely for the privilege of carrying on an intrastate business?

2. Can a state levy a privilege or occupation tax upon the intrastate business of a person, firm or corporation when such person, firm or corporation is also engaged in

the carrying on of an interstate business which is incidentally and indirectly affected by the tax?

TAX COMPUTED BY MILEAGE METHOD.

The Privilege Tax Law of Mississippi of 1930 shows from a reading of the whole act that it was an effort on the part of the Legislature to levy a tax on the various kinds of trades, occupations and businesses named therein for the privilege of carrying on such trades, occupations and businesses within the confines of the State of Mississippi. It will be seen that in a great majority of instances the tax fixed by the Legislature was a certain arbitrary sum, which a person who intended to engage in such business must pay for the privilege of so conducting or engaging in that business in Mississippi. No one now questions the right of the Legislature to levy a fixed and certain sum by way of a privilege tax. It, therefore, follows that if the Legislature has such power it has the power to levy a privilege tax which is capable of becoming fixed and certain by means of a simple mathematical computation. Such is the tax in question:

TAX INDIRECTLY AFFECTING INTERSTATE COMMERCE.

The question whether a state can levy a tax upon an intrastate business when such a tax indirectly and incidentally affects an interstate business may be determined, and should be determined, by the question whether such interstate business could be continued without the burden of such tax, provided the intrastate business was discontinued.

In the instant case there seems to be no doubt that if the appellee discontinued its sales of gas to the Mississippi distributors the tax levied by virtue of Section 163 of the Mississippi Privilege Tax Law of 1930 could not be collected. In others words, if appellees simply carried on its business of transporting gas from its Monroe gas fields through the State of Mississippi for ultima sale and delivery to distributors at Baton Rouge and New Orleans, Louisiana, there would be and could be no privilege tax levied by the State of Mississippi on such transportation. The tax levied by said Section 163 is a tax on the business of operating a pipe line in this State. By virtue of Section 244 of said Act, all other clauses or parts of Section 163 which might be held unconstitutional or invalid may be disregarded, and this Court may turn its attention to the remaining portion of Section 163, which by virtue of Section 244 "shall be in force without regard to that so invalidated."

As stated before, the intention and purpose of the Legislature as gleaned from the act as a whole is shown to be to tax the privilege of carrying on the trades, occupations and businesses named therein in the State of Mississippi. So Section 163 of said act levies a tax only upon the privilege of engaging in the business of operating a pipe line in the State of Mississippi. It is clear that the business of operating a pipe line in Mississippi means the business of transporting, treating, preparing, selling and delivering natural or artificial gas in the State of Mississippi just as the business of operating a railroad, taxed by Section 159 of said act, means the transporting, handling and

delivering of passengers and freight in the State of Mississippi. The same may be said of Section 160, providing a tax on telegraph companies operating a telegraph business in this State, and Section 161, taxing the business of operating a sleeping car or palace car. Therefore, if appellee in the instant case would discontinue its activities in Mississippi, namely, the treating, transporting and selling of natural gas at wholesale to distributors at Natchez and Woodville it could continue the transporting of natural gas through Mississippi in its interstate mains without the imposition thereon of the indirect burden of Mississippi's occupation tax.

APPELLEE ENGAGING IN BOTH INTERSTATE AND INTRASTATE BUSINESS.

From the facts as agreed upon in this case, it is clear that the appellee is engaing in interstate commerce. There can be no doubt that so far as the State of Mississippi is concerned no regulation or burden can be placed upon appellee's business of transporting natural gas through the State of Mississippi in its interstate mains. The question for decision, and about which there is a conflict, is whether or not the fact that appellee taps its interstate mains at two points in Mississippi, reduces by means of a regulator the pressure of the gas passing through such taps, measures by means of a thermometer and meter the temperature and quantity of the gas allowed to pass through the taps and regulator, and then sells and delivers such gas so treated and prepared to distributors at Woodville and Natchez in the State of Mississippi, constitutes a business of purely local concern exclusively within the jurisdiction of the

State. There is no doubt that the gas moving through appellee's interstate trunk lines is in interstate commerce, but when appellee taps its own line, treats, prepares and sells the gas at wholesale it apears that the treatment and division of the large compressed volume of gas is like the breaking of an original package after shipment in interstate commerce.

Appellee's contention that its business is purely interstate business is based solely upon the theory that the two contracts above mentioned constitute orders sent by the distributors at Woodville and Natchez to the appellee's Monroe gas fields. In other words, appellee contends that these two contracts change the nature of what would ordinarily be intrastate business to interstate business. There seems to be no doubt that in the absence of these contracts the appellee would be engaged in treating, preparing for sale and selling natural gas in the State of Mississippi without having previously received an order in the State of Louisiana for such gas. It is a reasonable principle that the contract between the parties cannot change the legal effect or nature of the transaction between them. An examination of the contracts which appellee here contends are orders for interstate shipment of natural gas shows the following:

First: The vendee does not agree to purchase any particular amount of gas from the vendor, or to purchase any gas at all at any particular time.

Second: The vendor is not obligated by virtue of the contract to sell the vendee gas in preference to others, or

to restrict or reserve any of its properties for the vendee's exclusive benefit.

Third: There is no definite selling price for the gas in the contract. The price for which the gas is sold can only be determined after it has been actually used by the consumers (purchasing it from vendee) in Woodville and Natchez, Mississippi.

Fourth: The vendee's rights under the contract are subject to any prior obligations and contracts of vendor.

Fifth: The determination of the amount of gas purchased from vendor by the respective vendees must be determined by the vendor's meter in the State of Mississippi, and if vendee also measures such gas, the method of adjusting any differences must be determined by testing vendor's and vendee's meters in Mississippi.

It may be seen from this analysis of these contracts that they are simply executory contracts of sale. The appellee cannot tell what gas it will sell to the distributor at Woodville, or what gas it will carry on through the State of Mississippi into Louisiana. None of the gas is actually sold before it leaves the Monroe gas fields in Louisiana. It is true that the appellee is transporting gas with a view to selling it, but before the appellee relinquishes the title and control of any of its gas by delivery to the distributor, either at Natchez or Woodville, it must, under the very terms of its executory contract of sale, prepare and treat such gas for sale and delivery to such distributor. The

appellee alone controls and operates its taps, regulators, thermometers and meters.

Most of the Sections of Mississippi's 1930 Privilege Tax Laws levy a tax on the privilege of selling some commodity. For example, Section 42 levies a tax on dealers selling tobacco or cigarettes in wholesale lots. This is a tax on the privilege of selling cigarettes in wholesale quantities in the State of Mississippi. It is undoubtedly true that if an individual in Mississippi ordered a certain quantity of cigarettes from a Louisiana Company, there would be no tax on the transaction as it would be a purely interstate commerce transaction. However, let us presume that the said Louisiana Company shipped carload lots of cigarettes by rail through the State of Mississippi to a point in Alabama, and let us suppose that a distributor in Jackson, Mississippi, agreed to purchase cigarettes from this Louisiana Company in any quantity that he desired and at any time he desired, it being agreed that in order to obtain delivery of these cigarettes he would simply notify the Company upon the arrival of its carload of cigarettes in the City of Jackson that he desired cigarettes from that car. The Company would then have an agent deliver to the purchaser the number of cartons of cigarettes desired at such time. It seems clear that such a transaction would constitute the selling of cigarettes by a Louisiana Company in the State of Mississippi, and the tax on cigarettes would, therefore, apply.

The instant case is even stronger than the example cited for the reason that the appellee herein does not simply sell and deliver the gas to the Mississippi distributors after

it has arrived in Mississippi. The appellee, in addition to and prior to delivering it must treat and prepare such gas for sale and delivery and, therefore, in effect breaks the original package which has been transported in interstate commerce and prepares, sells and delivers the commodity in Mississippi. Hence it seems, that the appellee is carrying on both an interstate busines and an intrastate business in Mississippi, and that for the privilege of carrying on such intrastate business in Mississippi it may be taxed under Section 163 of the Privilege Tax Law of Mississippi of 1930, whether such tax incidentally and indirectly affects appellee's interstate business.

The determining factor in both the example above stated and the instant case is that the sale of the commodity in question is actually consummated at a time when such commodity is in the State of Mississippi. The instant case is not merely a case involving the delivery of an interstate shipment sent in response to an order. It is a case where the original package, being transported in interstate commerce, is broken, the commodity treated and prepared for sale and actually sold and delivered in the State of Mississippi.

B.

DISCUSSION OF AUTHORITIES.

It is elementary that a state can neither lay a tax on the act of engaging in interstate commerce nor on gross receipts therefrom.

Pullman Etc. Co. vs. Richardson, 261 U. S. 380, 67 L. Ed. 682, 43 S. Ct. 366:

N. J. Bell Telephone Company vs. State Board of Taxes and Assessments, 280 U. S. 332, 74 L. Ed. 463, 50 S. Ct. 111.

It is likewise elementary that a state may require payment of an occupation tax by one engaged in intrastate commerce or business, provided only that the taxing method chosen by the legislature is constitutional and is not simply a means of regulating or burdening interstate commerce directly.

AMOUNT AND FORM OF TAX IN QUESTION.

The motives of legislature and the policy or impolicy of the statutes to be construed are things with which the courts have nothing to do. If the State of Mississippi is possessed of the power to impose the privilege tax in question the amount of the tax and the form of the tax are questions for the legislature alone to decide. The only concern of this court is with the validity of this tax.

Allen vs. Pullman Palace Car Company, 191 U. S. 171, 48 L. Ed. 143;

Knoxville R. R. Company vs. Harris, 99 Tenn. 708, 53 L. R. S. 921;

Delaware Railroad Tax 18 Wall. 231, 21 L. Ed. 896;

California vs. Central, Etc. R. R. Company, 127 U. S. 1, 32 L. Ed. 150.

It is the rule of the Federal Courts to follow the state court's construction of its state statute. While it is true

that there is no decision of the Supreme Court of Mississippi construing this statute, there is a decision by such court construing a similar statute. In the case of *N. O. Etc. R. R Company vs. State*, 110 Miss., 290, the Supreme Court of Mississippi passed on the question whether a privilege tax on railroads for operating a railroad business within the State of Mississippi was constitutional. The statute there construed was similar to Section 159 of this act which provides a tax upon each person continuing in the business of operating a railroad in this state. The court held in that case that it was the purpose of the statute to impose on railroads a privilege tax for doing business within the State of Mississippi, and the court also held that the method of ascertaining the amount due, namely, by measuring the amount of tax by the number of miles of railroad track, was reasonable and valid. In that case the court said:

> "Taking the act by the four corners and keeping in view the object to be attained, we find this statute a part of the general scheme for levying privilege taxes on the several and various kinds of business, trades, and professions, done, practiced and carried on in Mississippi. The state in its sovereign capacity is exacting from those who do business and practice and enjoy their several trades and professions a tax as a condition precedent to the right of exercising privileges. The subject of the tax in each case is the party or corporation doing business, plying his trade, or practicing his profession in Mississippi, and not, of course, in a foreign state or county. The business sought to be taxed is, in each instance, the business done within the confines of our own state. In the case

of appellant the tax sought to be imposed was certainly intended to be upon the business enjoyed by it in Mississippi and as a domestic corporation. Every intelligent man knows, and the legislature in enacting this law well knew, that a tax could not be imposed by our legislative department on interstate commerce, and that no law could be passed burdening interstate commerce or seriously embarrassing railroads in doing such business, or in doing business for the United States government. It is therefore unreasonable to assume that the legislature had any intention of burdening or embarrassing interstate commerce. The act, as stated, appears in the chapter dealing with privilege taxes, and not in connection with any statutory provisions providing the terms and conditions upon which foreign corporations may do business in our commonwealth. There is no effort here to impose hard conditions or charge fees for admitting foreign corporations or allowing railroads to do an interstate business. The subject-matter dealt with is entirely different. There is here not the slightest suggestion that the statute is attempting to discriminate against, or to impose any unreasonable regulations upon foreign corporations or upon railroads traversing our territory. This is not a tax upon any agent or agency of any interstate railroad, or upon any means employed by such railroad company to get business, as was the fact in many of the cases decided by the United States Supreme Court and relied on by appellant. We are not called upon to take issue with any of the pronouncements of the United States Supreme Court in any of the cases cited by counsel for appellant. This is not a tax on the income or gross earnings of

any railroad. There is no effort here to tax the earnings of appellant or any other railroad company. The tax for the privilege of doing business in Mississippi is upon the mileage of railroads in Mississippi, and not only is this true, but the legislature, in an apparent effort to be reasonable, has fixed the maximum rate per mile, and consequently a maximum amount beyond which the tax in no case could run. In this regard it falls within the principle announced by the supreme court of the United States in *Baltic Mining Company vs. Massachusetts*, 231 U. S. 68, 34 Sup. Ct. 15, 58 L. Ed. 127, as follows:

> "'So, if the tax is, as we hold it to be, levied upon a legitimate subject of such taxation, it is not void because imposed upon property beyond the state's jurisdiction, for the property itself is not taxed. In so far as it is represented in the authorized capital stock it is used only as a measure of taxation, and, as we have seen, such measure may be found in property or in the receipts from property not in themselves taxable'."

"The Baltic Mining Company Case is differentiated from the case at bar, but the principle announced is applicable to the instant case. A railroad company might own a transcontinental railroad running through Mississippi and earning annually millions of dollars, yet this fact could, in no way, under any view of the case, influence the Commission in fixing upon such road a tax in excess of forty-five dollars per mile, prescribed to be paid by railroads of the first class."

It, therefore, follows that the method of measuring the tax in the instant case by the number of miles of pipe line is a reasonable method of computing the tax. Hence, it appears that the tax levied is a constitutional valid tax the sum of which can be readily computed.

EFFECT ON INTERSTATE COMMERCE INDIRECT.

The next question which arises is whether the tax is one purely for the privilege of carrying on an intrastate busines and if so whether it can be validly imposed, even though it incidentally and indirectly affects or burdens appellee's interstate business.

This court has held in the Pullman Palace Car Company Case, supra, the case of *St. Louis R. R. Company vs. Arkansas*, 235 U. S. 350, and the case of *New York v. Sohmer*, 235 U. S. 549, that a state license or occupation tax on a foreign corporation for the privilege of doing business in such state is valid and constitutional, although such corporation may also be engaged in doing an interstate business. And in the case of *Chaney Brothers vs. Massachusetts*, 246 U. S. 147, the court held that a privilege tax on stores keeping goods in the state partly for intrastate and partly for interstate sale was valid as being a tax solely on the privilege of doing business in the state. It will be noted that in this case the goods were in the state at the time of the sale.

The test of the constitutionalty of a privilege tax upon intrastate business which tax indirectly burdens in-

terstate busines is whether or not the payment of the tax is compulsory before either an intrastate or interstate business can be carried on within such state. This principle was announced in the case of *Pullman Palace Car Company vs. Adams*, 189 U. S. 420, 47 L. Ed. 871, wherein the court held that the privilege tax on the State of Mississippi upon each car carrying passengers within the state was a valid tax. The conclusion in this case, as in the Pullman Palace Car Company case arising in Tennessee, was based upon the right of the company to abandon the intrastate business if it saw fit. The court said that the pullman company might continue its interstate business in Mississippi declining local business and thereby escape the tax levied upon business wholly within the state. This is equally true in the business of transporting and selling natural gas.

In the case of *Hump Hair Pin Manufacturing Company vs. Emmerson*, 258 U. S. 290, 66 L. Ed. 622, the court enunciated this principle as follows:

> "While a state may not use its taxing power to regulate or burden interstate commerce (citing cases), on the other hand it is settled that a state excise tax which affects such commerce, not directly, but only incidentally and remotely, may be entirely valid where it is clear that it is not imposed with the covert purpose or with the effect of defeating Federal constitutional rights. * * * The turning point of these decisions is whether, in its incidents the tax affects interstate commerce so directly and immediately as to amount to a genuine and substantial regulation of, or restraint upon, it, or whether it affects it only incidentally or remotely, so that the tax is not in

reality a burden, although in form it may touch, and in fact, distantly affect it."

See also:

U. S. Express Company vs. Minnesota, 223 U. S. 335, 56 L. Ed. 459;

Maine vs. Grand Trunk Railway Company, 142 U. S. 217, 35 L. Ed. 994.

The clearest statement on this point seems to be found in the case of *Sprout vs. South Bend*, 277 U. S. 163.

Mr. Justice Brandeis, in delivering the opinion of the court said:

> "A state may by appropriate legislation require payment of an occupation tax from one engaged in both intrastate and interstate commerce. But, in order that the fee or tax shall be valid, it must appear that it is imposed solely on account of the intra-state business; that the amount exacted is not increased because of the interstate business done; that one engaged exclusively in interstate commerce would not be subject to the imposition; and that the person taxed could discontinue the intrastate business without withdrawing also from the interstate business."

APPELLEE IS ENGAGED IN INTRASTATE BUSINESS IN MISSISSIPPI.

The decision of this case is now narrowed to a decision of the question whether the appellee herein, Interstate Natural Gas Company, is carrying on a purely interstate business in Mississippi, or whether it is carrying on in addition

to its interstate business an intrastate business in Mississippi.

The appellee's chief contention is that the very terms of its contracts with the distributors at Woodville and Natchez respectively show that it is not carrying on an intrastate business. In the recent case of *Superior Oil Company vs. State of Mississippi, ex rel, Knox, Attorney General,* 280 U. S. 390, the court held that it was not within the power of the parties by the form of their contract to convert a local business into an interstate business protected by the commerce clause when the contract achieved nothing else. In other words, it is not the form of the contract which determines whether the appellee here is engaged in intrastate business in Mississippi but rather it is the law of the land as evolved from the decisions of this court which determines when applied to the facts of the instant case the nature of the business carried on by appellee. The cases laying down the principle here involved and which are controlling in the instant case are as follows:

General Oil Company vs. Crane, 209 U. S. 211;

Sonneborn Brothers vs. W. A. Keeling, Attorney General of Texas, 266 U. S. 505, 67 L. Ed. 1095;

Ozark Pipe Line Company vs. Monier, 266 U. S. 555;

Atl. C. L. R. R. vs. Standard Oil Company, 275 U. S. 254;

Carson Petroleum Company, vs. Vial, Sheriff and Tax Collector, 279 U. S. 95;

East Ohio Gas Company vs. Tax Commission of Ohio, cited in United States Supreme Court Advance Opinions, No. 15 at page 700, and decided by this court without a dissenting opinion on May 18, 1931.

It will be noted that all of the cases cited above as being controlling in the instant case are cases involving the question of taxation of an intrastate business.

In the case of *General Oil Company vs. Crane*, supra, the appellant conducted a large oil business in Memphis, where it gathered from the North much oil and maintained an establishment for its disposition. It had tanks of various sizes from which the oil was put in barrels or other vessels to be sold either locally or in other states. Part of this oil was placed in a stationary tank known as Tank No. 1 and marked "Oil Already Sold in Arkansas, Louisiana, Mississippi." The oil yet to be sold was kept in other tanks. Appellant contended that the oil in Tank No. 1 was on a continuous trip through Memphis to the ascertained customers in Arkansas, Louisiana and Mississippi and was not taxable at Memphis as it was always in interstate commerce. The court held that the activities of the company in thus separating the oil after it reached Memphis into various amounts and in different containers was itself a local business in Memphis, and that the delivery and receipt of the oil in Memphis and its subsequent shipment made two separate interstate shipments and permitted local taxation on the oil while it awaited the second shipment.

On the other hand, in the case of *Carson Petroleum Company vs. Vial, supra*, oil was stored at a port in Lou-

isiana in storage tanks awaiting shipment by boat. None of it was sold, segregated or treated, or otherwise disposed of in the port. The principle object was to complete the shipment as swiftly as possible. In that case the court held that the continuity of the journey was not broken by the storage, and that a tax on the oil while so stored was unconstitutional as the entire transaction was one in interstate commerce.

It may be readily seen by a comparison of the two cases just analyzed that the determining factor in those cases was whether the oil was separated, treated, prepared and sold while within the confines of the particular state seeking to levy a tax thereon.

It is true that in the instant case there are no storage tanks. The gas is continually flowing from the Monroe gas fields in Louisiana into and through the State of Mississippi, but this also was the fact in the case of *Atl. C. L. R. R. Co. vs. Standard Oil Company, supra.* The plaintiff there was engaged in selling oil within the State of Florida. It had storage tanks on or near the Florida seaboard in which it kept supplies sufficient to meet the demands of its business for considerable periods in advance and which it replenished from time to time by fresh supplies purchased by it from other companies. The supplies so purchased were shipped in by the vendors from Louisiana and Mexico respectively and delivered in bulk to plaintiff by pumping the oil from the ships through plaintiff's pipe lines into plaintiff's storage tanks. None of the oil so brought in was designated or intended for any particular point in Florida.

The court, holding that the nature of the commerce in controversy in that case was intrastate, said:

> "The question whether commerce is interstate or intrastate must be determined by the essential character of the commerce, and not by the mere billing or forms of contracts, although that may be one of a group of circumstances tending to show such character. The re-shipment of an interstate or foreign shipment does not necessarily establish a continuity of movement nor prevent the shipment to a point within the same state from having an independent or intrastate character even though it be in the same cars. * * * * We have no hesitation in finding that the nature of the commerce in controversy in this case was intrastate. * * * * The argument is made that these are continuous streams of oil from Baton Rouge or Tampico into the bulk stations in the interior of Florida where it is sold to the customers of the plaintiff and that its interstate character continues through that entire passage. It may as suggested in the argument that oil is being discharged into plaintiff's receptacles for its storage at the same time that it is being discharged from the storage tanks into storage tank cars for its distribution, but that is not at all inconsistent with its being a closing of interstate or foreign transportation and beginning of intrastate distribution for the purpose and business of the plainiff."

The similarity between the Atlantic C. L. R. R. Co. Case, supra, and the instant case is that in both cases the commodity transported in interstate commerce is not pre-

vented from having an independent or intrastate character simply because of such fact.

Another of appellee's contentions is that the mere fact that the gas is actually sold, that the title to it actually passes at a time when the gas is in the State of Mississippi is not important. Appellee, however, does not consider the fact that in addition to selling and delivering such gas, it treats it and prepares it for sale in Mississippi. It appears that the case of *Sonneborn Brothers v. W. C. Keeling, etc.*, supra, is authority to the contrary. In that case Sonneborn Brothers had an office in Dallas, Texas, and sold oil. The State of Texas sought to tax them as wholesale dealers in oil, the tax to be computed on the gross amount collected and uncollected from all sales made within the State and in a sum equal to two per cent of such gross amount. The tax in question was an occupation tax. The firm's sales consisted of four broad classes: one, the sale of oil which, when sold, was not in Texas; two, sales of oil to be transported from Texas and delivered in another state; three, sales of oil shipped into Texas and afterwards sold from the store rooms of appellants in the unbroken original packages; four, sales in Texas from broken packages. It was admitted that the receipts from the first two classes could not be taxed and the receipts from class four could be taxed. The question for decision was whether the sales in unbroken original packages, just as received in interstate commerce, could be taxed. In considering the question, the court said:

> "The interstate transportation was at an end and whether in the original packages or not, a

> state tax upon the oil as property or upon its sale in the state, if the state law levied the same tax on all oil or all sales of it without regard to origin, would be neither a regulation nor a burden of the interstate commerce of which this oil had been the subject."

Pointing out that the tax levied did not prevent the appellant from carrying on its interstate business the court continued:

> "It is enough to point out the radical difference between state legislation preventing any sale at all accompanied by a forfeiture of the merchandise and the provision of an occupation tax applicable to all sales of such merchandise whether domestic or brought from another state. The one plainly interferes with, or destroys the commerce. The other merely puts the mechandise on an equality with all other merchandise in the state and constitutes no real hindrance to introducing the merchandise into the state for sale upon the basis of equal competition."

In this connection the appellee referred to and relied on the case of *Ozark Pipe Line Company v. Monier,* supra. In that case the State of Missouri sought to levy a franchise tax of one-tenth of one percent of the par value of capital stock of corporations. The facts showed that the Pipe Line Company operated a pipe line extending from Oklahoma through Missouri to a point in Illinois. The court held that Missouri's franchise tax could not be levied upon this company and was unconstitutional as to this company as the company was carrying on a purely interstate business and the tax was a tax imposed for the privilege

of doing business in corporate form and all businesses, both interstate and intrastate, would have to cease if it were not paid.

In discussing the question whether the pipe line company was engaged in a purely interstate business, the court pointed out that the company kept its principal office in Missouri, where it kept books and bank accounts, paid employees, employed labor, maintained telephone lines, entered into contracts and carried on various other activities in connection with and in furtherance of its pipe line operations. The court said, however, that all of this business conducted in the state of Missouri was exclusively in furtherance of its interstate business. These activities, the court said, "were the means and instrumentalities by which that business was done and in no proper sense constituted or contributed to the doing of a local business." The court further observed:

> *"Oil is neither received nor delivered in the State of Missouri."* (Italics ours.)

It is our contention, therefore, that, instead of being an authority in support of appellee's contention, this case, as shown by the reasoning in the opinion thereof, supports our contention.

The facts in the instant case, unlike the facts in the Ozark Pipe Line case, show that gas is not only delivered in the State of Mississippi, but is in addition thereto treated, prepared and sold in the State of Mississippi by the appellee herein. All of the activities of the Ozark Pipe Line Company in the State of Missouri were exclusively in

furtherance of its interstate business, but the activities of the Interstate Natural Gas Company, appellee here, in the State of Mississippi are entirely separate and disconnected from its interstate operations. It may be seen therefore that all of appellee's contentions are fully met and squarely determined by decisions of this court provided the activities of appellee in the State of Mississippi constitute the carrying on of an intrastate business.

This question was resolved in favor of appellant on May 18th, 1931, when this court, speaking through Mr. Justice Butler, delivered its opinion in the case of *East Ohio Gas Company v. Tax Commission of Ohio*, supra. In that case the appellant engaged as a public utility in the business of furnishing natural gas to consumers in more than fifty municipalities in the state of Ohio. It obtained its supply of gas partly from its own Ohio wells, partly from West Virginia wells and partly from Pennsylvania wells. It transported the gas obtained from West Virginia and Pennsylvania from the state line of those states in its high pressure transmission lines. Those high pressure lines were connected with distribution lines which led to the distribution systems in the various municipalities served. The company by means of regulators reduced the pressure of its gas when it was diverted into the various distribution lines from two hundred to three hundred pounds per square inch to from thirty to fifty pounds per square inch. The flow of gas was then controlled in the various municipalities and on the premises of consumers by the needs of the various consumers.

In deciding the question whether the Ohio tax for the

privilege of carrying on an intrastate business was applicable to appellant's business, conducted as aforesaid, Mr. Justice Butler, in delivering the opinion of the court, said:

> "But when the gas passes from the distribution lines into the supply mains, it necessarily is relieved of nearly all the pressure put upon it at the stations of the producing companies, its volume thereby is expanded to many times what it was while in the high pressure interstate transmission lines, and it is divided into the many thousand relatively tiny streams that enter the the small service lines connecting such mains with the pipes on the consumers' premises. So segregated the gas in such service lines and pipes remains in readiness or moves forward to serve as needed. The treatment and division of the large compressed volume of gas is like the breaking of an original package, after shipment in interstate commerce, in order that its contents may be treated, prepared for sale and sold at retail." (Authorities cited.)

In the instant case the appellee treats and divides its large compressed volume of gas just as appellant did in the East Ohio Gas Company case. The only distinction between the two cases is that the East Ohio Gas Company divided, treated, and prepared its gas for sale and sold it *at retail.* In the instant case the appellee divided, treated and prepared its gas for sale and sold it *at wholesale.* It appears, therefore, that if the East Ohio Gas Company was carrying on an intrastate business in Ohio, upon which the State of Ohio could levy an occupation tax, the Interstate

Natural Gas Company, appellee herein, is likewise carrying on an intrastate business in Mississippi, upon which the State of Mississippi can levy the occupation tax imposed by Section 163 of Chapter 88, known as the Privilege Tax Law of Mississippi of 1930.

CASES RELIED ON BY APPELLEE.

The cases relied on by appellee at the hearing in the court below were, with two exceptions, cases in which a state sought to regulate the rate or price at which gas should be sold within such state. The instant case is not a regulation case. It is a case involving the constitutionality of a state occupation or privilege tax. Appellee relied on the case of *Missouri v. Kansas Gas Company*, 265 U. S. 298; *Peoples Gas Company v. Pennsylvania*, 270 U. S. 550; and *Pennsylvania Gas Company v. Public Service Commission*, 252 U. S. 23, 64 L. Ed. 434, 40 S. Ct. 279.

As to the last named case, the court in the East Ohio Gas Company case, supra, said:

> "It does not appear that there were presented, in *Pennsylvania Gas Co. v. Public Serv. Commission*, to the state court or here the considerations on which it is held that interstate commerce ends and intrastate business begins when gas flowing through pipe lines from outside the state passes into local distribution systems for delivery to consumers in the municipalities served. But, however that may be, the opinion in that case must be disapproved to the extent that it is in conflict with our decision here."

In the two cases first cited above the states of Missouri and Pennsylvania sought to regulate the price at which gas should be sold in the two states respectively. In those cases the gas was transported directly from one state to another and there sold and delivered. The court decided that the transaction was more national in character than local and hence the state could not regulate the selling price of gas as the entire transaction, consisting of transportation, sale and delivery, was interstate commerce.

In the Kansas Gas Company case, the court gave as its reason for such decision the following:

> "It is as though the commission stood at the state line and imposed its regulations upon the final step in the process at the moment the interstate commodity entered the state and before it had become a part of the general mass of the property therein."

It is evident that this reasoning is not applicable to the instant case. That case was a regulation case while the instant case deals with a statute imposing an occupation tax. The court in that case said, in this regard:

> "In the absence of congressional legislation, a state may constitutionally impose taxes, enact inspection laws, quarantine laws and general laws of internal police although they may have an incidental effect upon interstate commerce."

For the same reason the cases of *Pennsylvania v. West Virginia*, 262 U. S. 533, and *Public Utilities Commission v. Landon*, 245 U. S. 236, are not applicable here. These,

also, were regulation cases in which the regulation in question was held to discriminate against interstate commerce.

Appellee relies on two cases in which states sought to levy privilege taxes on gas being transported through interstate trunk pipe lines, namely, *Eureka Gas Company v. Hallahan*, 257 U. S. 265, and *United Fuel Gas Company v. Hallahan*, 257 U. S. 277. In both of these cases the state sought to impose a privilege tax of two cents per barrel on all oil transported through interstate trunk pipe lines. The tax was on the very article of commerce itself and hence was a direct burden on interstate commerce. The amount of the tax was directly affected by the number of barrels of oil transported through the state. The tax was held invalid as a direct burden on interstate commerce.

The method of computing the tax in the instant case is reasonable and valid and the amount of the tax is not increased or decreased by the quantity of the gas transported in interstate commerce.

V.

CONCLUSION.

In conclusion, we respectfully submit:

First, that the state privilege tax imposed by Section 163, of Chapter 88 of the Laws of Mississippi of 1930, is a constitutional and valid tax as (1) the method of computing the tax is reasonable and the amount of the tax is certain, and (2) the tax is a tax solely for the privilege of carrying on an intrastate business.

Second, the tax imposed by said section upon an in-

trastate business may be imposed upon a person, firm or corporation who is engaged, not only in intrastate business but, also, in interstate business, as the interstate business is affected indirectly and incidentally by the tax and could be engaged in without being affected at all if the intrastate business taxed were discontinued.

Third, the contracts between appellee and its respective distributors do not change the nature of appellee's business in Mississippi, as such contracts do not provide for the definite and certain order of a fixed quantity of a commodity to be shipped in response thereto, through interstate commerce.

Fourth, the appellee herein is engaged in intrastate business in the State of Mississippi as well as interstate commerce because its activities in Mississippi in dividing, treating, preparing, selling and delivering natural gas are equivalent to the breaking of an original package and the subsequent sale and delivery of its contents.

Appellant therefore specifically asks that the decree of the lower court be reversed and the perpetual injunction therein granted be dissolved.

Respectfully,

GEO. T. MITCHELL, Attorney General,

J. A. LAUDERDALE,
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Attorneys for Appellant.

E. R. HOLMES, Jr., Special Agent,
Of Counsel.

We hereby certify that we have this day mailed a copy of the foregoing brief to Honorable David Clay Bramlette, Attorney for Appellee, at his post office address in Woodville, Mississippi, postage prepaid.

This the ..... day of September, 1931.

By .....

Attorney for Appellants.

FILE COPY

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CHARLES ELMORE

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D., 1931

No. 40

STATE TAX COMMISSION OF MISSISSIPPI, et al.,
Appellants,

vs.

INTERSTATE NATURAL GAS COMPANY,
INCORPORATED, Appellee

BRIEF OF APPELLEE

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Attorney for Appellee

LAUDER & ARNOLD - MEMPHIS

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Attorney for Appellee.

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BRIEF OF APPELLEE

I.

FINAL DECREE OF COURT BELOW

The final decree of the Court below may be found at pages 58 to 60 inclusive record.

II.

HISTORY OF CASE

The bill of complaint of Interstate Natural Gas Company, Incorporated, appellee, was filed in the United States District Court of the Southern District of Mississippi, seeking to restrain the State Tax Commission of Mississippi and the Attorney-General of Mississippi from collecting a

privilege tax imposed upon appellee by Section 163 of Chapter 88 of the Laws of 1930 of Mississippi designated as the "Privilege Tax Law of 1930," and from otherwise enforcing the provisions of said law against appellee, upon the ground of the unconstitutionality of said statute (R. 1); whereupon, under Section 380 of United States Code, being Section 266 of the Judicial Code, the case was heard before a Court composed of Circuit Judge Foster and District Judges Holmes and Borah, on bill of complaint of appellee, answer of appellants and an agreed statement of facts (R. 55), on September 29, 1930, when appellee was granted an interlocutory injunction, restraining the collection of said privilege tax from appellee and otherwise from enforcing the provisions of said statute against appellee.

The final hearing was had in New Orleans on February 20, 1931, and the interlocutory injunction was made permanent. The finding of facts by the Court in accord with the agreed statement was as a basis of the decision, that appellee, incorporated under the Laws of Delaware, domiciled therein at Wilmington, owns and operates for the transportation or transmission of natural gas, owned and acquired by appellee in the State of Louisiana, to distributors, a trunk pipe line or lines, extending from the northern part of the State of Louisiana through Mississippi and again into Louisiana; that less than one per cent of the gas flowing through said pipe line is transported to distributors in Mississippi, where appellee does not sell any natural gas at retail; the Court further found that the sale of natural gas in Mississippi was provided for in two contracts executed at a main office of appellee in New York City, prior to the delivery of said natural gas in said trunk pipe line or lines, and payments for said natural gas are made at the office of appellee in Monroe, Louisiana; that said natural gas flows continuously from Louisiana in said

trunk pipe line or lines, to the points of delivery in Mississippi, where the pipe line of appellee is tapped by lines of two distributors, and meters are furnished and provided by appellee to measure the amount of gas sold to the two Mississippi distributors; that all transportation or transmission of natural gas into and through Mississippi, is continuous and without interruption and appellee does not store any of said natural gas for any time or in any quantity in the State of Mississippi. The conclusions of the Court were that appellee is engaged wholly and exclusively in interstate commerce in the State of Mississippi and that the statute exacting a privilege tax from appellee contravenes Article 1, Section VIII, Clause 3, or the Commerce Clause, of the Constitution of the United States and is, therefore, invalid and void as affecting appellee, Interstate Natural Gas Company, Incorporated, because the said privilege tax law unduly burdens interstate commerce and constitutes an unreasonable interference therewith. R 58.

As provided for by Section 345 of United States Code, being Section 238 of the Judicial Code, the final judgment of the Court below is brought by appeal for a review by this Court.

III.

THE ISSUES

The questions confronting the Court are:

1. Whether by prior contract, executed in New York, the transportation or transmission of natural gas by pipe line from Louisiana into Mississippi to two distributors, payment therefor being made in Louisiana, constitutes interstate commerce; and whether transporting natural gas by pipe line from Louisiana *through Mississippi* into Louisiana constitutes interstate commerce in Mississippi.

2. Whether appellee, engaged in such commerce, may be subjected by a statute of the State of Mississippi to the payment of a privilege tax, the payment thereof being a condition precedent to appellee engaging in such commerce in Mississippi and, further, subjected to the penalties and numerous criminal prosecutions, provided for, on failure to pay said privilege tax.

IV.

THE STATUTE INVOLVED

The statute involved is Chapter 88 of the Laws of 1930 of Mississippi, therein designated as the "Privilege Tax Law of 1930," and the section providing for and fixing the amount of the privilege tax to be collected from appellee follows:

> "SEC. 163. PIPE LINE COMPANY.—Upon each person engaging and/or continuing in this state in the business of operating a pipe line or transporting in *or through this state* oil, or natural, or artificial gas, through pipes, and/or conduits, a tax as follows:
>
> On each mile of pipe having a diameter of 20 inches or more $50.00
>
> On each mile of pipe having a diameter of 15 inches and less than 20 inches 35.00
>
> On each mile of pipe having a diameter of 12 inches and less than 15 inches 25.00
>
> On each mile of pipe having a diameter of less than 12 inches 10.00
>
> The term 'pipe line' as used in this section shall include *only trunk lines* and shall not opply to those pipe lines used solely for distributing gas or oil in or near cities, towns and villages (known as service lines), to

the ultimate consumer. And this section shall not apply to those persons, firms or corporations mining and/or producing gas or oil on which a privilege tax measured by gross production is imposed and paid in this state."

(Italics ours).

Section 3 of said statute follows:

"PRIVILEGE TAXES IMPOSED.—Every person desiring to engage in any business, or exercise any privilege hereinafter specified, shall first, *before commencing same,* apply for, pay for, and procure from the proper officer a privilege license authorizing him to engage in the business, or exercise the privilege specified therein; and the amount of tax shown in the following schedules is hereby imposed for the privilege of engaging and/or continuing in the business set out therein." (Italics ours)

Section 225 of said statute provides:

"DAMAGES AND PENALTY FOR FAILURE TO PROCURE LICENSE.—All persons liable for privilege taxes who shall fail to procure the license therefor *before beginning the business* for which a privilege tax is required by law, or who shall fail to renew, during the month in which it is due, the license in a business for which he has theretofore procured a privilege license, shall in each or either such instance be liable for *double* the amount of the tax required for such business, and it is hereby made the duty of the collector whose duty it is to collect the tax on such business to collect the said tax *penalty,* issue a separate license for the tax, and for the penalty, and to endorse across the face of the license issued as a penalty the words: 'Collected as Damages'; and they shall account for all such penalties, less commissions, as they are required to account for other privilege taxes. In addition to the hereinabove described *penalties* the delinquent taxpayer shall be *guilty of a misdemeanor and subject to the penalties therefor.*" (Italics ours).

Section 1314 of the Mississippi Code of 1930 provides:

"PENALTY WHERE NONE FIXED ELSEWHERE BY STATUTE.—Offences for which a penalty is not provided elsewhere by statute, and offences indictable at common law, and for which a statutory penalty is not elsewhere prescribed, shall be punished by fine of not more than $500.00 and imprisonment in the county jail not more than six months, or either."

Section 240 of the statute involved provides:

"OFFICER LIABLE FOR TAXES WHICH HE MIGHT BUT FAILS TO COLLECT.—The tax officer required to collect privilege taxes shall require all persons liable to pay a privilege tax to pay the same; and he shall cause all persons doing business without a privilege license to be *prosecuted*. The tax officer required to collect privilege taxes shall be liable for wilful failure to collect the same in the same manner as for failure to collect ad valorem taxes, and the liability of such officer shall extend to all cases where he might collect such taxes but negligently fails to do so. The demand required by this section shall not be necessary to render *liable* the taxpayer to the *penalty of doing business without first paying the tax.*" (Italics ours)

Section 242 of the statute involved provides:

"PENALTIES.—Any person violating any of the provisions of this chapter shall be *guilty of a misdemeanor* and on conviction thereof shall be fined not more than $500.00 *or imprisoned in the county jail not exceeding six months,* or by *both such fine and imprisonment* in the discretion of the court within the limitations aforesaid; and *such fine and imprisonment shall be in addition to any other penalty* imposed by any particular section of this chapter (act). The courts of

the county in which the offender resides, or if a company, in which it carries on business, shall have jurisdiction to enforce this section." (Italics ours)

V.

THE FACTS

The agreed statement of facts (R. 55) discloses that:

Appellee is incorporated under the laws of Delaware and domiciled therein at Wilmington, having main office in New York City, New York, and an office at Monroe, State of Louisiana, and is the owner of a large acreage of proven mineral lands in the area known as the Monroe Gas Field in the State of Louisiana, and from these and other lands in the Monroe Gas Field in the State of Louisiana, appellee owns and is constantly acquiring gas. In finding a market for said natural gas, appellee has constructed, owns and operates for the transportation or transmission of said natural gas to distributors a trunk line or lines, extending from the northern part of the State of Louisiana in a southeasterly direction through the State of Mississippi, and again into the State of Louisiana. Approximately 70,000,000 cubic feet of natural gas are sold and transported daily through Mississippi and again into Louisiana to distributors during the summer period, and about 75,000,000 cubic feet daily during the winter months. Approximately 204,000 cubic feet during the summer are sold and transported daily into Mississippi to two distributors and approximately 520,000 cubic feet daily during the winter months. For the greater part of this gas thirty-five cents per thousand cubic feet is received and for the balance twenty cents per thousand cubic feet is received. The gas sold and transported into Mississippi is less than 1% of the gas flowing through Mississippi and again into Louisiana. Approximately for

gas sold and transported into Mississippi the amount of $46,754.00, annually, is derived. The annual privilege tax demanded of appellee under the Mississippi statute involved is $3,873.65.

Exhibits A and B to the agreed statement of facts are two contracts between the municipality of Woodville, Mississippi, and appellee and Central Power and Light Company, respectively, the interests of Central Power and Light Company in the contract designated as exhibit A, having been assigned to Mississippi Power and Light Company. The municipality of Woodville and Mississippi Power and Light Company distribute natural gas at retail to consumers in Woodville, Mississippi, and Natchez, Mississippi, respectively. These two contracts were executed in New York City, New York, and payments for natural gas purchased by the distributors, Mississippi Power and Light Company of Natchez and the municipality of Woodville, are made at the office of Interstate Natural Gas Company, Incorporated, in Monroe, Louisiana, R. 56. As a part of their distribution systems, the Natchez and Woodville distributors, respectively, have constructed a pipe line from Natchez and Woodville, respectively, to the trunk pipe line of appellee, gas flowing therefrom on a wholesale basis into said pipe lines of said respective distributors, and the said natural gas flows continuously where the pipe line of appellee is tapped and where a meter is furnished by appellee, both at Natchez and at Woodville, for measuring the gas sold and delivered under said contracts, all of said transportation or transmission of natural gas being continuous and without interruption. R. 57.

The agreed statement of facts further discloses that appellee does not store any of said gas for any time or in any quantity in the State of Mississippi. R. 57.

The essential provisions of the two contracts being the same, by agreement, only exhibit A or the contract between appellee and Central Power and Light Company, subsequently succeeded by Mississippi Power and Light Company is set out in full in the record. R. 39. This contract was entered into on March 10, 1927, and recites that, whereas, appellee is constructing a pipe line from its natural gas properties in the Monroe Gas Field to the refinery of the Standard Oil Company of Louisiana near Baton Rouge to supply gas for the fuel requirements of said refinery and desires to dispose of its surplus gas, and, whereas, Central Power and Light Company, which distributes artificial gas in Natchez, Mississippi, proposes to convert its plant to a natural gas system and desires to purchase from appellee its supply of natural gas under the terms thereof, therefore, agreement between appellee, thereinafter called "vendor" and Central Power and Light Company thereinafter called "vendee" was entered into and further terms and conditions set out. Vendor agreed to sell and vendee agreed to purchase and receive from vendor all of the natural gas necessary to meet the requirements of the various consumers of vendee in Natchez, Mississippi, for a term of ten years, commencing from date of first delivery of gas to vendee not earlier than March 1, 1927, and not later than May 1, 1927. Vendee, in addition to supplying consumers in Natchez reserved the right to serve consumers along the transmission pipe line to be built by vendee between point of delivery by vendor and the city limits of Natchez. R. 40. Vendee was to have in readiness its distribution system not later than April 1, 1927, nor earlier than March 1, 1927, in Natchez, of such capacity and design as to furnish a sufficient and adequate supply of natural gas through said city at a pressure as uniform as is practicable and vendee obligated itself to construct a pipe line from its distribution

system in Natchez to a tap in vendor's 22-inch pipe line, located on Minor Plantation, south of Natchez. R. 41. The contract further provided that the delivery of gas to vendee should be at or about a pressure of 50 pounds per square inch above atmosphere and vendor agreed to maintain at the point of delivery the necessary regulator to accomplish delivery at or about said pressure; the unit of measurement is set out. R. 41. Vendor agreed to furnish a Westcott Orfice meter or other standard style agreed upon, and provision was made for the testing of said meter. R. 42. In the event of disagreement as to the quantity of gas furnished arbitration is provided for. R. 43. In addition to the meter furnished by vendor, provision is made for a meter to be furnished by vendee. R. 43.

Under the contract the prices to be paid by the vendee to the vendor are set out. R. 44. On or before the 20th day of each calender month, the contract provided, the vendee shall pay to the vendor at Monroe, Louisiana, for all gas delivered by vendor to vendee. R. 45, 46. The vendor expressly agreed that it would exercise reasonable diligence and care to avoid any shortage or interruption in the supply of natural gas under the contract. R. 46, 47. It was agreed that vendor may interrupt its service to vendee only for the purpose of making necessary alterations and repairs, and then only for such time as may be reasonable or unavoidable and vendor shall give to vendee, except in case of an emergency, reasonable notice of any necessary interruption, and vendor shall endeavor to arrange such interruption so as to inconvenience vendee and its consumers as little as possible. R. 47. The contract further provided that the failure of the vendee to make payments to the vendor for gas purchased in accordance with the provisions of the contract should entitle vendor to terminate the contract. R. 49.

Detailed references to the contract are made to demonstrate that it is a prior contract of sale as definite and as fixed as it could be in advance of delivery of natural gas sold by vendor to vendee. Under the contract, at the point where the Natchez distributor connected with the high pressure 22 inch trunk line of appellee, it was necessary that a regulator be furnished through which the gas flows from the trunk line to the distributor's line, merely, however, to reduce the pressure just as it is necessary for the gas to flow through a meter at the point of delivery in order to ascertain the quantity delivered and in addition a thermometer was necessary to ascertain the temperature, necessary in the unit of measurement. With all due respect to opposing counsel, we are unable to find anything in the contract indicating that appellee "treated" or "prepared" the gas at the time of delivery as indicated in the analysis of facts by appellants.

The agreed statement of facts further discloses that as a part of the trunk line of appellee, extending from Louisiana through Mississippi and again into Louisiana appellee has 72.42 miles of pipe having a diameter of 22 inches, 8.11 miles of pipe having a diameter of 12 inches, and 4.99 miles of pipe having a diameter of 10 inches, all located in Wilkinson and Adams County, Mississippi, of the total value in Mississippi in excess of $2,000,000.00 and in Louisiana the total value of the pipe line exceeds $15,000,000.00. R. 57. The agreed statement further sets out that unless enjoined, defendants will enforce the said Privilege Tax Law of 1930 of Mississippi against appellee; further that there is no way to determine in advance how much gas will pass through the points of delivery near Natchez and Woodville, respectively, where the trunk pipe line of appellee is tapped and a quantity can only be determined after it has passed through said meters near Natchez and Woodville, respectively. R. 58.

SUMMARY OF ARGUMENT

1. Appellee is engaged wholly and exclusively in interstate commerce in Mississippi, and the statute involved, attempting to exact a privilege tax as a condition precedent to appellee engaging in interstate commerce in Mississippi, with the numerous provisions for penalties, fines and terms of imprisonment for failure to pay this privilege tax, contravenes the Constitution of the United States.

2. Acts of appellee in Mississippi are exclusively in furtherance of appellee's interstate commerce.

3. Had appellee been engaged in intrastate business, the statute involved does not impose a privilege tax solely on intrastate business, but affirmatively imposes a privilege tax on one engaged exclusively in interstate business.

ARGUMENT

I.

APPELLEE IS ENGAGED WHOLLY AND EXCLUSIVELY IN INTERSTATE COMMERCE IN MISSISSIPPI.

In the case of *Missouri v. Kansas Natural Gas Co.*, 265 U. S. 298, 44 S. Ct. 544, the Supreme Court of United States held that the transportation of gas from one state to another is interstate commerce, and the sale and delivery of it to local distributing companies is a part of such commerce to quote from the opinion of Mr. Justice Sutherland at page 545:

> "The business of the Supply Company, with an exception not important here, is wholly interstate. The

sales and deliveries are in large quantities not for consumption, but for resale to consumers. There is no relation of agency between the Supply Company and the distributing companies, or other relation except that of seller and buyer (Public Utilities Comm. v. Landon, 249 U. S. 236, 244-245, 39 Sup. Ct. 258, 63 L. Ed. 577), and the interest of the former in the commodity ends with its delivery to the latter, to which title and control thereupon pass absolutely. The question is therefore presented in its simplest form, and, if the claim of state power be upheld, it is difficult to see how it could be denied in any case of interstate transportation and sale of gas. Both federal courts denied the power. The state court conceded that the business was interstate and subject to federal control, but rested its decision the other way upon the fact that Congress had not acted in the matter and that, in the absence of such action, it was within the regulating power of the state.

(2) The question is controlled by familiar principles. Transportation of gas from one state to another is interstate commerce, and the sale and delivery of it to the local distributing companies is a part of such commerce. In Public Utilities Comm. v. Landon, supra, at page 245 (39 Sup. Ct. 269) this court said:

'That the transportation of gas through pipe lines from one state to another is interstate commerce may not be doubted; also, it is clear that as part of such commerce the receivers might sell and deliver gas so transported to local distributing companies free from unreasonable interference by the state.'

See Pennsylvania v. West Virginia, 262 U. S. 553, 596, 43 Sup. Ct. 658, 67 L. Ed. 1117) and cases there cited. (3, 4) The line of division between cases where, in the absence of congressional action, the state is authorized to act, and those where state action is precluded by mere force of the commerce clause of the

Constitution, is not always clearly marked. In the absence of congressional legislation, a state may constitutionally impose taxes, enact inspection laws, quarantine laws, and generally, laws of internal police, although they may have an incidental effect upon interstate commerce. Pennsylvania Railroad Co. v. Hughes, 191 U. S. 477, 488-491, 24 Sup. Ct. 132, 48 L. Ed. 268. But the commerce clause of the Constitution, of its own force, restrains the states from imposing direct burdens upon interstate commerce. In Minnesota Rate Cases, 230 U. S. 352, 396, 33 Sup. Ct. 729, 739 (57 L. Ed. 1511, 48 L. R. A. (N. S.) 1151, Ann. Cas. 1916A, 18), Mr. Justice Hughes, speaking for the court said:

'If a state enactment imposes a direct burden upon interstate commerce, it must fall, regardless of federal legislation. The point of such an objection is not that Congress has acted, but that the state has directly restrained that which in the absence of federal regulation should be free.'

The question is so fully discussed in that case, that nothing beyond its citation is required."

The Ozark Pipe Line Corporation is a Maryland corporation that owns and operates a pipe line, extending from within Oklahoma, through Missouri, to a point in Illinois. The District Court of the United States for the Western District of Missouri upheld a statute providing for an annual franchise tax equal to one-tenth of one per cent of the par value of the capital stock and surplus of a foreign corporation employed in business in Missouri. On appeal, Mr. Justice Sutherland in the case of *Ozark Pipe Line Corporation v. Monier*, 266 U. S. 555, 45 S. Ct. 184, 185, said:

"The tax is one upon the *privilege or right to do business* (State ex rel v. State Tax Commission, 282 Mo. 213, 234, 221 S. W. 721), and if appellant is engaged only in interstate commerce it is conceded, as it

must be, that the tax, so far as appellant is concerned, constitutionally cannot be imposed. It long has been settled that a state cannot lay a tax on interstate commerce in any form, whether on the transportation of subjects of commerce, the receipts derived therefrom, or the occupation or business of carrying it on. Leloup v. Port of Mobile, 127 U. S. 640, 648, 8 S. Ct. 1380, 32 L. Ed. 311; Kansas City Ry. v. Kansas, 240 U. S. 227, 231, 36 S. Ct. 261, 60 L. Ed. 617, and cases cited. Plainly, the operation of appellant's pipe line is interstate commerce and beyond the power of state taxation. Eureka Pipe Line Co. v. Hallanan, 257 U. S. 265, 272, 42 S. Ct. 101, 66 L. Ed. 227; United Fuel Gas Co. v. Hallanan, 257 U. S. 277, 42 S. Ct. 105, 66 L. Ed. 234. But the contention in justification of the tax is that appellant is also engaged in doing local business, the basis of such contention being the facts concerning its ownership and use of property, other than the pipe line, and its various acts and activities within the state hereinbefore recited, and, further, that the purposes for which it is incorporated, as declared in its articles, comprehend other activities than that of transporting petroleum, namely, the acquisition and operation of telegraph and telephone lines, dealing in and transporting merchandise, etc."

And again at page 186:

"The present case comes within the reasoning of the two decisions last cited. (Norfolk R. Co. v. Pennsylvania, 136 U. S. 114, 120, 10 S. Ct. 958, 960, 34 L. Ed. 394, and Heyman v. Hays, 236 U. S. 178, 35 S. Ct. 403, 59 L. Ed. 527). The business actually carried on by appellant was exclusively in interstate commerce. The maintenance of an office, the purchase of supplies, employment of labor, maintenance and operation of telephone and telegraph lines and automobiles, and appellant's other acts within the state, were all exclusively in furtherance of its interstate business, and the property itself, however extensive or of whatever character,

was likewise devoted only to that end. They were the means and instrumentalities by which that business was done and in no proper sense constituted, or contributed to, the doing of a local business. The protection against imposition of burdens upon interstate commerce is practical and substantial and extends to whatever is necessary to the complete enjoyment of the right protected. Heyman v. Hays, supra, page 186 (35 S. Ct. 403)."

The fact that no oil was received or delivered in the State of Missouri did not affect in the slightest the interstate commerce engaged in, because it is just as much interstate commerce to transport oil from Oklahoma into Missouri as it is to transport oil from Oklahoma through Missouri into Illinois; and in the case before the Court it is just as much interstate commerce to transport natural gas from Louisiana into Mississippi as it is to transport natural gas from Louisiana through Mississippi and again into Louisiana.

Natural gas flowing through a pipe line from one state into another and sold and delivered to a distributor, is interstate commerce, to quote from an opinion by Mr. Justice McReynolds in the case of *Public Utilities Commission of Kansas v. Landon,* 249 U. S. 236, 39 S. Ct. 268:

"That the transportation of gas through pipe lines from one state to another is interstate commerce may not be doubted. Also, it is clear that as part of such commerce the receivers might sell and deliver gas so transported to local distributing companies free from unreasonable interferenec by the state. American Express Co. v. Iowa, 196 U. S. 133, 143, 25 Sup. Ct. 182, 49 L. Ed. 417; Oklahoma v. Kansas Natural Gas Co., 221 U. S. 229, 31 Sup. Ct. 564, 55 L. Ed. 716, 35 L. R. A. (N. S.) 1193; Haskell v. Kansas Natural Gas Co., 224 U. S. 217, 32 Sup. Ct. 442, 56 L. Ed. 738. But in no prop-

er sense can it be said, under the facts here disclosed, that sale and delivery of gas to their customers at burnertips by the local companies operating under special franchises constituted any part of interstate commerce. The companies received supplies which had moved in such commerce and then disposed thereof at retail in due course of their own local business. Payment to the receivers of sums amounting to two-thirds of the product of these sales did not make them integral parts of their interstate business. In fact, they lacked authority to engage by agent or otherwise in the retail transactions carried on by the local companies. Interstate commerce is a practical conception and what falls within it must be determined upon consideration of established facts and known commercial methods. Rearick v. Pennsylvania, 203 U. S. 507, 512, 27 Sup. Ct. 159, 51 L. Ed. 295; The Pipe Line Cases, 234 U. S. 548, 560, 34 Sup. Ct. 956, 58 L. Ed. 1459. The thing which the receivers actually did was to deliver supplies to local companies. Exercising franchise rights, the latter distributed and sold the commodity so obtained upon their own accont and paid the receivers what amounted to two-thirds of their receipts from customers. Interstate movement ended when the gas passed into local mains."

Section 157 of the Privilege Tax Law of 1930 of Mississippi, the statute involved, provides that the annual privilege tax imposed and levied, is in addition to any and all other taxes imposed by law; it is not a tax on property nor in lieu of a property tax.

In the case of *East Ohio Gas Company v. Tax Commission of Ohio et al.*, 51 S. Ct. 499, decided May 18, 1931, Mr. Justice Butler said:

"The transportation of gas from wells outside Ohio by the lines of the producing companies to the state line and thence by means of appellant's high pressure

transmission lines to their connection with its local systems is essentially national—not local—in character and is interstate commerce within as well as without that state. The mere fact that the title or the custody of the gas passes while it is en route from state to state is not determinative of the question where interstate commerce ends. Public Utilities Comm. v. Landon, 249 U. S. 239, 245, 39 S. Ct. 268, 63 L. Ed. 577; Missouri v. Kansas Gas Co., 265 U. S. 298, 307-309, 44 S. Ct. 544, 68 L. Ed. 1027; People's Gas Co. v. Pub. Ser. Comm., 270 U. S. 550, 554, 46 S. Ct. 371, 70 L. Ed. 726; Pub. Util. Comm. v. Attleboro Co., 273 U. S. 83, 89, 47 S. Ct. 294, 71 L. Ed. 549. But when the gas passes from the distribution lines into the supply mains, it necessarily is relieved of nearly all the pressure put upon it at the stations of the producing companies, its volume thereby is expanded to many times what it was while in the high pressure interstate transmission lines, and it is divided into the many thousand relatively tiny streams that enter the small service lines connecting such mains with the pipes on the consumers' premises. So segregated the gas in such service lines and pipes remains in readiness or moves forward to serve as needed. The treatment and division of the large compressed volume of gas is like the breaking of an original package, after shipment in interstate commerce, in order that its contents may be treated, prepared for sale, and sold at retail. State v. Flannelly, 96 Kan. 372, 383-384, 152 P. 22; W. Va. & Md. Gas Co. v. Public S. Com., 134, Md. 137, 143-145, 106 A. 265. Cf. Atlantic Coast Line v. Standard Oil Co., 275 U. S. 257, 269, 48 S. Ct. 107, 72 L. Ed. 270; Brown v. Maryland, 12 Wheat. 419, 6 L. Ed. 678; Leisy v. Hardin, 135 U. S. 100, 10 S. Ct. 681, 34 L. Ed. 128. It follows that the furnishing of gas to consumers in Ohio municipalities by means of distribution plants to supply the gas suitably for the service for which it is intended is not interstate commerce, but a business of purely local concern exclusively within the jurisdiction of the state."

Appellee, Interstate Natural Gas Company, Incorporated, is engaged solely and exclusively in transporting natural gas from Louisiana into Mississippi and through Mississippi and again into Louisiana. Appellee does not sell gas at retail but sells it wholesale only to distributors on prior order and contract of sale before the transportation of the gas is started from Louisiana. Interstate Natural Gas Company, Incorporated, does not retail gas to consumer but in the State of Mississippi that is done by the Mississippi Power and Light Company at Natchez and the municipality of Woodville at Woodville. In other words the Mississippi Power and Light Company and the municipality of Woodville in the State of Mississippi occupy the same position as the East Ohio Gas Company does in the State of Ohio in the retail distribution of gas to consumers. From no fact in this case may it be inferred that Interstate Natural Gas Company, Incorporated, "treats" or "prepares" or "sells at retail" natural gas as was done by East Ohio Gas Company.

II.

ACTS OF APPELLEE IN MISSISSIPPI ARE EXCLUSIVELY IN FURTHERANCE OF APPELLEE'S INTERSTATE COMMERCE.

Among the necessities of this interstate commerce transaction, is for the natural gas in passing from the high pressure 22 inch trunk pipe line of appellee to distributor's small pipe line, to pass through a regulator to reduce the pressure, a meter in order that the exact quantity previously sold by contract may be determined and for a thermometer to be used to ascertain the temperature which affects the volume in measurement, and the furnishing of these instrumentalities by appellee at point of delivery does not

change this interstate transaction into an intrastate transaction; nor is the status of the transaction affected by the difference in price paid appellee by the distributor for gas sold to domestic and commercial consumers and gas sold to industrial consumers all of which constitute mere matters of detail and a method for calculating the quantity of gas sold and the total amount due therefor, as fixed by the prior contract of sale.

As heretofore stated appellee is not a distributor at retail to the ultimate consumer and from no fact in this record may it be inferred that appellee "treats" or 'prepares" gas for sale in Mississippi or does any other act in Mississippi, except what is absolutely necessary and exclusively in furtherance of appellee's interstate commerce in Mississippi. It is absolutely necessary that there be a regulator at the point of delivery where the retail distributor's pipe line taps the high pressure trunk pipe line of appellee. With the natural gas flowing at high pressure through the 22 inch trunk line of appellee, when turned into the retail distributor's small pipe line, necessarily, there must be a reduction in pressure, by having the gas merely to pass through a simple regulator to accomplish this. In addition, while appellee as vendor and the retail distributors in Mississippi as vendees, have executed a prior contract of sale, the exact measurement of the quantity of gas delivered to these retail distributors can only be accomplished by having the gas pass through a meter at the point of delivery, where the high pressure trunk pipe line of appellee is tapped by the retail distributor's pipe line. The use of a thermometer is merely to assist in fixing the unit of measurement at the point of delivery.

In the Ozark Pipe Line case, supra, the Court pointed out that as heretofore quoted, that the principal office of

the Ozark Pipe Line Company was in Missouri, where its records were kept, its employees within and without the state were paid, supplies were purchased, contracts were entered into, three pumping stations along the pipe line were maintained in Missouri, but all of these activities in Missouri were in furtherance of the pipe line operations and none of them constituted local or intrastate business.

It is also contended however, that in view of the fact that the prices for natural gas in this case varied according to whether the consumers were domestic and commercial or industrial, and appellee had access to the books of the retail distributor, that this constituted the doing of local or intrastate business by appellee. It is a matter of common knowledge that two or three industrial organizations may consume as much gas as a city of 50,000 population for domestic purposes. Therefore, very properly a difference in rates is allowed, and the respective quantities of domestic and commercial gas, and industrial gas, can only be definitely fixed by the consumption thereof. It is not contended that the retail distributor is an agent of appellee or is connected in any possible way with appellee. This contention is conclusively answered in the case of *Public Utilities of Kansas v. Landon*, supra, wherein local retail distributor was to pay for the gas acquired two-thirds of its receipts from the customers but the Court held that this fact did not affect the status of the interstate transaction which continued up to the delivery of the gas into the local mains for retail distribution to the ultimate consumer.

In the very recent case of *Furst v. Brewster*, 51 S. Ct. 295, in holding that shipment of goods from without state under contract constituted "interstate commerce" regardless of whether contract effectuated sale or created agency, Mr. Chief Justice Hughes said:

"The question is not as to sales made by Brewster in Arkansas, but as to the transactions between Brewster and Furst & Thomas. These transactions were clearly in interstate commerce, whether or not Furst & Thomas were agents of the Furst-McNess Company, and whether or not Brewster was an agent of Furst & Thomas. In pursuance of orders sent by Brewster in Arkansas to Furst & Thomas in Illinois, goods were shipped to Arkansas from the branch warehouse of Furst & Thomas in Tennessee. The ordering and shipment of the goods constituted interstate commerce, and the obligation to pay and the right to recover the amount due, according to the contract pursuant to which the goods were sent, arose in the course of that commerce. In International Text-Book Company v. Pigg, 217 U. S. 91, 107, 30 S. Ct. 481, 54 L. Ed. 678, 27 L. R. A. (N. S.) 493, 18 Ann. Cas. 1103, this court quoted with approval the language of the Circuit Court of Appeals for the Eighth Circuit, speaking by Judge Sanborn, in Butler Bros. Shoe Company, v. United States Rubber Company, 156 F. 1, 17, a case of consignments to a factor, that 'all interstate commerce is not sales of goods. Importation into one state from another is the indispensable element, the test, of interstate commerce; and every negotiation, contract, trade, and dealing between citizens of different states, which contemplates and causes such importation, whether it be of goods, persons, or information, is transaction of interstate commerce.' Such commerce comprehends all the component parts of commercial intercourse between different states, and according to established principle, any state statute which obstructs or lays a direct burden on the exercise of the privilege of engaging in interstate commerce is void under the commerce clause. Crutcher v. Kentucky, 141 U. S. 47, 57, 11 S. Ct. 851, 35 L. Ed. 649; Western Union Telegraph Company v. Kansas, 216, U. S. 1, 27, 30 S. Ct. 190, 54 L. Ed. 355; Dahnke-Walker Milling Company v. Bondurant, 257 U. S. 282, 290, 291, 42 S. Ct. 106, 66 L. Ed. 239."

See also: *Dozier v. Alabama*, 218 U. S. 124, 30 S. Ct. 649; *B. & O. S. W. R. Co. v. Settle*, 260 U. S. 166, 43 S. Ct. 29; *Brown v. Maryland*, 12 Wheaton 419, 6 L. Ed. 679.

III.

HAD APPELLEE BEEN ENGAGED IN INTRASTATE BUSINESS, THE STATUTE INVOLVED DOES NOT IMPOSE A PRIVILEGE TAX SOLELY ON INTRASTATE BUSINESS, BUT AFFIRMATIVELY IMPOSES A PRIVILEGE TAX ON ONE ENGAGED EXCLUSIVELY IN INTERSTATE BUSINESS.

In the case of *East Ohio Gas Company v. Tax Commission of Ohio*, 51 S. Ct. 499, supra, Mr. Justice Butler said:

> "It is elementary that a state can neither lay a tax on the act of engaging in interstate commerce nor on gross receipts therefrom. Pullman Co. v. Richardson, 261 U. S. 330, 338, 43 S. Ct. 366, 67 L. Ed. 682. New Jersey Tel. Co. v. Tax Board, 280 U. S. 338, 346, 50 S. Ct. 111, 74 L. Ed. 463. And, while a state may require payment of an occupation tax by one engaged in both intrastate and interstate commerce, the exaction, in order to be valid, must be imposed solely on account of the intrastate business without enhancement because of the interstate business done, and it must appear that one engaged exclusively in interstate business would not be subject to the imposition, and that the taxpayer could discontinue the intrastate business without withdrawing also from the interstate business. Sprout v. South Bend, 277 U. S. 163, 170-171, 48 S. Ct. 502, 72 L. Ed. 833, 62 A. L. R. 45, and cases cited."

Tax laws should be liberally construed in favor of taxpayers *Burnet v. Niagara Falls Brewing Company*, 51 S. Ct. 262. All taxing statutes are to be construed most strongly against the taxing power. *Conrad v. Mississippi State Tax Commission*, 133 So. (Miss.) 652, *McKenzie v. Adams Banks Lumber Co.*, 157 Miss. 482, *Miller v. Illinois Central Railroad Co.*, 146 Miss. 422.

If the Legislature of Mississippi is clothed with the power to levy a privilege tax of $50.00 per mile on appellee's trunk pipe line through the state, or a privilege tax alone, of nearly one-tenth of the value of the natural gas sold and transported into Mississippi in addition to all other taxes, the Legislature could levy a privilege tax of $350.00 per mile or more by such taxation could destroy the interstate commerce business of appellee.

Mr. Chief Justice Marshall in *McCulloch v. Maryland*, 4 Wheaton 316, 431, 4 L. Ed. 579, said:

> "That the power to tax involves the power to destroy; . . . "

In his argument in this case, Mr. Webster said:

> "An unlimited power to tax involves, necessarily, a power to destroy; . . . "

So, even had appellee been engaged in intrastate commerce, which it was not, and even had the statute involved levied the privilege tax on intrastate commerce, which it did not, still the statute involved contravenes the Constitution of the United States because it affirmatively attempts to impose a privilege tax on a person operating pipe line or transporting natural gas throuh Mississippi and then proceeds to limit the privilege tax to trunk pipe lines. Nowhere in this record does it appear that appellee was engaged in intrastate business and nowhere in the statute involved does it appear that the privilege tax was imposed solely on account of intrastate business and as stated by Mr. Justice Brandeis in *Sprout v. South Bend*, 277 U. S. 263, 48 St. Ct. 502, 505 such a privilege tax is invalid.

CASES RELIED UPON BY APPELLANTS

There is no conflict presented by the cases cited by appellants and the cases cited by appellee; in fact, we respectfully submit that the cases cited by appellants in every instance, when analyzed, sustain appellee's position.

Appellants quote at length from *New Orleans, M. & C. R. Co. v. State,* 110 Miss. 290, in that case a domestic corporation (P. 299), wherein the Supreme Court of Mississippi passed on the question of whether a privilege tax on a railroad for operating a railroad business purely within the State of Mississippi (Syl. 2) is constitutional. Further, this decision cannot possibly be of any value in the case before the Court because it does not construe the statute involved here; in addition, nowhere in the railroad privilege tax statute does the phrase *"through the state"* appear and nowhere is the privilege tax limited to trunk lines. Before being construed by the Mississippi Supreme Court, just as the statute involved in this case has never been construed by the Mississippi Supreme Court, the United States District Court, composed of Circuit Judge Shelby, and District Judges Niles and Grubb, construed this railroad privilege tax statute in the case of *Illinois Central Railroad Company v. Mississippi Railroad Commission, et al.,* 229 Federal Reporter 248, 255, and District Judge Grubb for the Court said, after citing many cases from the Supreme Court of United States:

> "From them the conclusion is irresistible that a state statute exacting of one engaged in interstate commerce and governmental business a license for the privilege of doing business, in general terms and without expressly exempting from its terms interstate and governmental business, and which has not been construed to do so by the court of last resort of the state

of its enactment, is to be construed as exacting a license for engaging in all business, including interstate commerce and governmental business, as to persons or corporations so engaged, and void as to them, though so measured as not to come in conflict otherwise with the Constitution. Under the language of the act of Mississippi, railroad companies could be prosecuted for exercising the privilege of doing a railroad business without taking out a license, though they were engaged in business purely of an interstate and governmental character, and there has been no contrary construction of this act in this respect by the Supreme Court of Mississippi."

It will also be noted that the Supreme Court of Mississippi in that opinion quoted from by appellants based its decision on and quoted from *Baltic Mining Co. v. Massachusetts,* 23 U. S. 68, 34 S. Ct. 15, 58 L. Ed. 127, a case subsequently modified, and the very language quoted therefrom and made the basis of the decision of the Supreme Court of Mississippi, has been definitely disapproved by this Court, in *Alpha Portland Cement Co. v. Massachusetts,* 268 U. S. 203, 45 S. Ct. 477, 481, to quote:

"It must now be regarded as settled that a state may not burden interstate commerce or tax property beyond her borders under the guise of regulating or taxing intrastate business. So to burden interstate commerce is prohibited by the commerce clause, and the Fourteenth Amendment does not permit taxation of property beyond the state's jurisdiction. The amount demanded is unimportant when there is no legitimate basis for the tax. So far as the language of Baltic Mining Co. v. Massachusetts, 231 U. S. 68, 87, 34 S. Ct. 15, 58 L. Ed. 127, tends to support a different view it conflicts with conclusions reached in later opinions and is now *definitely disapproved.*"

In the case of *Cheney Bros. Co. v. Massachusetts*, 246 U. S. 147, 38 S. Ct. 295, 62 L. Ed. 632, relied upon by appellants, this case involved the business of seven different corporations, six of which were clearly engaged in local business in Massachusetts and the seventh, Cheney Bros. Co., it was decided, did not conduct a local business in Massachusetts as distinguished from interstate commerce, although an office was maintained in Boston with one office salesman and four other salesmen traveling through New England, also stock of goods being kept in the Boston office but only samples being used in soliciting and taking orders.

In the case of *Hump Hairpin Mfg. Co. v. Emmerson*, 258 U. S. 290, 42 S. Ct. 305, quoted by appellants, was involved an excise tax by the State of Illinois on a West Virginia corporation with all of its tangible property in Illinois, specifically levied on business done within the State of Illinois.

The case of *Sprout v. South Bend*, 277 U. S. 163, 48 S. Ct. 502, supra, and the very quotation of Mr. Justice Brandeis sustains the position of appellee, namely:

> "But in order that the fee or tax shall be valid, it must appear that it is imposed solely on account of the intrastate business."

In the case of the statute involved, as hereinbefore shown, it clearly attempts to impose a privilege tax on one operating a pipe line or transporting natural gas through Mississippi and defines "pipe line" as used therein as including only trunk lines and not applying to pipe lines used solely for distributing gas or oil to the ultimate consumer near cities, nor as service lines.

The facts in the case of *Atlantic Coast Line R. Co. v. Standard Oil Co.*, 275 U. S. 257, 48 S. Ct. 107, cited by appellants, are that the oil and gasoline shipped into Florida came to rest in storage tanks or tank cars, for distribution to different parts of the state as ordered, as Mr. Chief Justice Taft said:

> "It seems very clear to us on a broad view of the facts that the interstate or foreign commerce in all this oil ends upon its delivery to the plaintiff into the storage tanks or the storage tank cars at the seaboard, and that from there its distribution to storage tanks, tank cars, bulk stations, and drive-in stations, or directly by tank wagons to customers, is all intrastate commerce. This distribution is the whole business of the plaintiff in Florida. There is no destination intended and arranged for with the ship carriers in Florida at any point beyond the deliveries from the vessels to the storage tanks or tank cars of the plaintiff."

In addition, in the foregoing case, local taxes were paid on all of the products in the storage tanks on the Florida assessing date.

The case of *Sonneborn Bros. v. Cureton*, 262 U. S. 506, 43 S. Ct. 643 involved a state tax in Texas for merchandise bought from another state in original packages that were in a state of rest in a warehouse and had become a part of a stock to be sold to wholesale dealers in Texas.

We see no occasion further to discuss in detail other cases cited by appellants since they do not conflict with appellee's position in this case.

VII.

CONCLUSION

In conclusion, we respectfully submit:

First. That the facts demonstrate conclusively that appellee is engaged solely and exclusively in interstate commerce in Mississippi.

Second. There is no act of appellee in Mississippi even tending to show that appellee is engaged in a local business or intrastate commerce in Mississippi.

Third. Even had appellee been engaged in a local business or in intrastate commerce in Mississippi, the statute involved makes no pretense of levying or imposing a privilege tax solely on account of intrastate commerce, but affirmatively and in words imposes a privilege tax on interstate commerce.

Fourth. Chapter 88 of the Laws of Mississippi of 1930 designated as the Privilege Tax Law of 1930 of Mississippi, contravenes Article 1, Section VIII, Clause 3, or the Commerce Clause, of the Constitution of the United States and Section 163 thereof is unconstitutional and void.

Appellee respectfully submits that the final decree of the Court below should be affirmed.

Respectfully submitted,

DAVID CLAY BRAMLETTE,
Attorney for Appellee.

We hereby certify that we have this day mailed a copy of the foregoing brief to Honorable George T. Mitchell, Attorney-General of Mississippi, Attorney for Appellants, by postage prepaid, at his Post Office address, Jackson, Mississippi.

This 5th day of October, A. D., 1931.

David Clay Bramlette
Attorney for Appellee.

SUPREME COURT OF THE UNITED STATES.

No. 40.—October Term, 1931.

State Tax Commission of Mississippi, et al., etc., Appellants,
vs.
Interstate Natural Gas Company, Incorporated.

Appeal from the District Court of the United States for the Southern District of Mississippi.

[November 23, 1931.]

Mr. Justice Holmes delivered the opinion of the Court.

This is an appeal from a decree of three Judges sitting according to statute in the District Court, by which the Tax Commission of the State of Mississippi is permanently enjoined from enforcing a Privilege Tax Law of that State, being chapter 88 of the laws of 1930, against the Interstate Natural Gas Company, the plaintiff in this suit.

The facts are agreed. The plaintiff has a trunk line of pipe extending from gas fields in Louisiana through Mississippi and back to Louisiana; 72.42 miles having a diameter of 22 inches, 8.11 miles having a diameter of 12 inches and 4.99 miles a a diameter of 10 inches. It sells daily to distributors in Louisiana about 70,000,000 cubic feet of natural gas in summer and about 75,000,000 feet in winter. In Mississippi it sells as will be explained from 204,000 to 520,000 feet according to the season. The gas flows continuously from the gas fields in Louisiana and obviously, for much the greater part at least, in interstate commerce. But the appellants rely upon business done under two similar contracts made in New York to show that there was intrastate commerce in Mississippi that may be taxed without burdening the main activity that the State cannot touch. *Ozark Pipe Line Corporation* v. *Monier*, 266 U. S. 555, 563. *East Ohio Gas Co.* v. *Tax Commissioners of Ohio*, 283 U. S. 465, 470. Distributing companies tap the plaintiff's pipes near Natchez and the town of Woodville. The gas withdrawn by the distributors is measured

by a thermometer and a meter furnished by the plaintiff which is the only way in which it can be measured. The pressure of the gas is reduced by the plaintiff before it passes into the purchaser's hands. The work done by the plaintiff is done upon the flowing gas to help the delivery and seems to us plainly to be incident to the interstate commerce between Louisiana and Mississippi. The plaintiff simply transports the gas and delivers it wholesale not otherwise worked over than to make it ready for delivery to the independent parties that dispose of it by retail. *Missouri* v. *Kansas Gas Co.*, 265 U. S. 298. *Public Utilities Commission* v. *Landon*, 249 U. S. 236, 245. *Ozark Pipe Line Corporation* v. *Monier*, 266 U. S. 555.

Decree affirmed.

A true copy,

Test:

Clerk, Supreme Court, U. S.